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United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(In Three Volumes.)

STANDARD PORTLAND CEMENT CORPORATION, a Corporation,

Plaintiff in Error,

VS.

ERNEST E. EVANS, GEORGE COLEMAN, and
PERCY W. EVANS, Partners Doing Business Under
the Firm Name of EVANS, COLEMAN AND
EVANS,

Defendants in Error.

VOLUME I.

(Pages 1 to 304, Inclusive.)

Upon Writ of Error to the United States District Court of
the Northern District of California, Second Division.

FILED

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Record of U.S. Circuit
Court of appeal
499

No. 2235

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Writ of Error1054

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

ERNEST E. EVANS, ——— COLEMAN. and
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

Complaint in Action at Law.

The plaintiffs above named complain of the defendants above named and allege:

I.

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland.

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman & Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman [1*] are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That on the 5th day of May, 1908, the defendant the Standard Portland Cement Corporation made, executed and delivered to the plaintiffs its promissory note in the words and figures following, to wit:

“San Francisco, May 1st, 1908.

For value received the Standard Portland Cement Corporation promises to pay to the order of Evans, Coleman and Evans, on or before one year from and after May 1st, 1908, the sum of Thirty Thousand Dollars, with interest thereon from said day until paid, at the rate of six per cent per annum, payable semi-annually, and if not so paid to be compounded.

STANDARD PORTLAND CEMENT
CORPORATION,

By WILLIAM J. DINGEE,

Vice-Pres'dt.

By L. F. YOUNG,

Secretary.”

[Seal of Corporation]

And at the same time, and as part of the said transaction, the defendants William J. Dingee and Irving N. Bachman endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note. Said endorsement and said waiver are written on the back of said note and

*Page-number appearing at foot of page of original certified Record.

are in the words following, to wit:

“IRVING A. BACHMAN.
WILLIAM J. DINGEE.

For value received, I hereby waive presentment, demand, protest, and notice of non-payment of within note.

WILLIAM J. DINGEE.
IRVING A. BACHMAN.”

Said endorsements were made before said note was delivered to [2] these plaintiffs.

That no part of said promissory note, either principal or interest, has been paid, and the full principal sum of \$30,000, together with interest thereon at the rate of six per cent per annum, compounded as in said note provided for, are due and unpaid.

That the plaintiffs are the owners and holders of said promissory note.

II.

For a second, further, separate and distinct cause of action the plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada and of the kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland.

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman & Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing un-

der the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That on or about the fifth day of May, 1908, the plaintiffs sold and delivered to the defendants, at their instance and request, certain bonds and stocks, to wit: bonds [3] of the Northwestern Portland Cement Company, a corporation, of the par value of Thirty Thousand Dollars, and Three Hundred shares of the capital stock of the said Northwestern Portland Cement Company, a corporation, of the par value of Thirty Thousand Dollars. That the defendants agreed to pay for said bonds and stocks as the purchase price the sum of \$30,000.

That the defendants have not, nor have any or either of them, paid the said sum of money, or any part thereof, and the whole thereof is due and unpaid, together with legal interest thereon from the said fifth day of May, 1908.

III.

For a third, further, separate and distinct cause of action plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland.

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman & Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That Charles D. Rand is and at all times hereinafter mentioned was an alien and resident of British Columbia, and [4] a citizen of the Dominion of Canada and of the Kingdom of Great Britain, and a subject of King Edward VII, King of Great Britain and Ireland.

That on the fifth day of May, 1908, the defendant the Standard Portland Cement Corporation made, executed and delivered to said Charles D. Rand its promissory note, in the words and figures following, to wit:

“San Francisco, May 1st, 1908.

For value received the Standard Portland Cement Corporation promises to pay to the order of Charles D. Rand, on or before one year from and after May 1st, 1908, the sum of Five Thousand Dollars, with interest thereon from said date until paid, at the rate of six per cent per annum, payable semi-

annually, and if not so paid to be compounded.

STANDARD PORTLAND CEMENT CORPORATION.

By WILLIAM J. DINGEE,

Vice-Pres'dt.

By L. F. YOUNG,

[Seal of Corporation]

Secretary."

And at the same time, and as part of the said transaction, the defendants William J. Dingee and Irving A. Bachman endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note. Said endorsement and said waiver are written on the back of said note and are in the words and figures following, to wit:

"IRVING A. BACHMAN,

WILLIAM J. DINGEE,

For value received, I hereby waive presentment, demand, protest, and notice of nonpayment of within note.

WILLIAM J. DINGEE.

IRVING A. BACHMAN."

Said endorsements were made before said note was delivered to [5] said Charles D. Rand.

That no part of said promissory note, either principal or interest, has been paid, and the full principal sum of \$5,000 together with interest thereon at the rate of six per cent per annum, compounded as in said note provided for, are due and unpaid.

That the said Charles D. Rand has assigned and

endorsed said promissory note to these plaintiffs, and these plaintiffs are now the owners and holders thereof.

IV.

For a fourth, further, separate and distinct cause of action the plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada, and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland.

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman & Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof. [6]

That Charles D. Rand is and at all times hereinafter mentioned was an alien and resident of British Columbia, and a citizen of the Dominion of Canada and of the Kingdom of Great Britain, and a subject of King Edward VII, King of Great Britain and Ireland.

That on or about the fifth day of May, 1908, the

said Charles D. Rand sold and delivered to the defendants, at their instance and request, certain bonds and stocks, to wit: bonds of the Northwestern Portland Cement Company, a corporation, of the par value of Five Thousand Dollars, and Fifty shares of the capital stock of the said Northwestern Portland Cement Company, a corporation, of the par value of Five Thousand Dollars. That at the said time of delivery the defendants agreed to pay said Charles D. Rand for said bonds and stocks the sum of \$5,000.

That the defendants have not, nor have any or either of them, paid the said sum of money, or any part thereof, and the whole thereof is now due and unpaid, together with legal interest thereon from the said fifth day of May, 1908.

That the said Charles D. Rand has assigned to these plaintiffs his claim against the defendants for the said purchase price of said bonds and stocks and these plaintiffs are now the owners and holders of said claim.

V.

For a fifth, further, separate and distinct cause of action plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland. [7]

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman & Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That T. R. Stockett, Trustee, is and at all times hereinafter mentioned was an alien and resident of British Columbia, and a citizen of the Dominion of Canada and of the Kingdom of Great Britain, and a subject of King Edward VII, King of Great Britain and Ireland.

That on the fifth day of May, 1908, the defendant the Standard Portland Cement Corporation made, executed and delivered to said T. R. Stockett, Trustee, its promissory note in the words and figures following, to wit:

“San Francisco, May 1st, 1908.

For value received the Standard Portland Cement Corporation promises to pay to the order of T. R. Stockett, Trustee, on or before one year from and after May 1st, 1908, the sum of Three Thousand Dollars, with interest thereon from said date until paid, at the rate of six per cent per annum, payable semi-

annually, and if not so paid to be compounded.

STANDARD PORTLAND CEMENT CORPORATION.

By WILLIAM J. DINGEE,
Vice-Pres'dt.
By L. F. YOUNG,
Secretary."

[Seal of Corporation] [8]

And at the same time, and as part of the said transaction, the defendants William J. Dingee and Irving A. Bachman endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note. Said endorsement and said waiver are written on the back of said note and are in the words and figures following, to wit:

"IRVING A. BACHMAN.
WILLIAM J. DINGEE.

For value received, I hereby waive presentment, demand, protest, and notice of nonpayment of within note.

WILLIAM J. DINGEE.
IRVING A. BACHMAN."

Said endorsements were made before said note was delivered to said T. R. Stockett, Trustee.

That no part of said promissory note, either principal or interest, has been paid, and the full principal sum of Three Thousand Dollars, together with interest thereon at the rate of six per cent per annum, compounded as in said note provided for, are due and unpaid.

That the said T. R. Stockett, Trustee, has assigned

and endorsed said promissory note to these plaintiffs and these plaintiffs are now the owners and holders thereof.

VI.

For a sixth, further, separate and distinct cause of action the plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada, and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland. [9]

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman & Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That T. R. Stockett, Trustee, is and at all times hereinafter mentioned was an alien and resident of British Columbia, and a citizen of the Dominion of Canada and of the Kingdom of Great Britain, and a subject of King Edward VII, King of Great Britain and Ireland.

That on or about the fifth day of May, 1908, the

said T. R. Stockett, Trustee, sold and delivered to the defendants, at their instance and request, certain bonds and stocks, to wit: bonds of the Northwestern Portland Cement Company, a corporation, of the par value of Three Thousand Dollars, and thirty shares of the capital stock of the said Northwestern Portland Cement Company, a corporation, of the par value of Three Thousand Dollars. That at the said time of delivery *and* defendants agreed to pay said T. R. Stockett, Trustee, for said bonds and stocks the sum of \$3,000.

That the defendants have not, nor have any or either of them paid the said sum of money, or any part thereof, and the whole thereof is now due and unpaid, together with legal interest thereon from the said fifth day of May, 1908. [10]

That the said T. R. Stockett, Trustee, has assigned to these plaintiffs his claim against the defendant for the said purchase price of said bonds and stocks and these plaintiffs are now the owners and holders of said claim.

VII.

For a seventh, further, separate and distinct cause of action these plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland.

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business

under the firm name of Evans, Coleman & Evans.

That the defendants Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That Thomas Graham is and at all times hereinafter mentioned was an alien and resident of British Columbia, and a citizen of the Dominion of Canada and of the Kingdom of Great Britain, and a subject of King Edward VII, King of Great Britain and Ireland.

That on the fifth day of May, 1908, the defendant, [11] the Standard Portland Cement Corporation made, executed and delivered to said Thomas Graham its promissory note in the words and figures following, to wit:

“San Francisco, May 1st, 1908.

For value received the Standard Portland Cement Corporation promises to pay to the order of Thomas Graham, on or before one year from and after May 1st, 1908, the sum of One Thousand Dollars, with interest thereon from said date until paid, at the rate of six per cent per annum, payable semi-annually,

and if not so paid to be compounded.

STANDARD PORTLAND CEMENT CORPORATION.

By WILLIAM J. DINGEE,
Vice-Pres'dt.

By L. F. YOUNG,
[Seal of Corporation] Secretary."

And at the same time, and as part of the said transaction, the defendants William J. Dingee and Irving N. Bachman endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note. Said endorsement and said waiver are written on the back of said note and are in the words and figures following, to wit:

"IRVING A. BACHMAN.
WILLIAM J. DINGEE.

For value received, I hereby waive presentment, demand, protest, and notice of nonpayment of within note.

WILLIAM J. DINGEE.
IRVING A. BACHMAN."

Said endorsements were made before said note was delivered to said Thomas Graham.

That no part of said promissory note, either principal or interest, has been paid, and the full principal sum of [12] One Thousand Dollars, together with interest thereon at the rate of six per cent per annum, compounded as in said note provided for, are due and unpaid.

That the said Thomas Graham has assigned and endorsed said promissory note to these plaintiffs and

these plaintiffs are now the owners and holders thereof.

VIII.

For an eighth, further, separate, and distinct cause of action the plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada, and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland.

That the plaintiffs are and at all the times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman and Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That Thomas Graham is and at all times hereinafter mentioned was an alien and resident of British Columbia, and a citizen of the Dominion of Canada and of the Kingdom of Great Britain and a subject of King Edward VII, King of Great Britain and Ireland. [13]

That on or about the fifth day of May, 1908, the

said Thomas Graham sold and delivered to the defendants, at their instance and request, certain bonds and stocks, to wit: bonds of the Northwestern Portland Cement Company, a corporation, of the par value of One Thousand Dollars, and ten shares of the capital stock of the said Northwestern Portland Cement Company, a corporation, of the par value of One Thousand Dollars. That at the said time of delivery the defendants agreed to pay said Thomas Graham for said bonds and stocks the sum of \$1000.

That the defendants have not, nor have any or either of them paid the said sum of money, or any part thereof, and the whole thereof is now due and unpaid, together with legal interest thereon from the said fifth day of May, 1908.

That the said Thomas Graham has assigned to these plaintiffs his claim against the defendants for the said purchase price of said bonds and stocks and these plaintiffs are now the owners and holders of said claim.

WHEREFORE plaintiffs pray judgment against the defendants and each of them for the sum of Forty Thousand Dollars (\$40,000), together with interest thereon from the first day of May, 1908, until date of judgment, at the rate of six per cent per annum, compounded semi-annually, and for costs of suit; and for such other relief as it may appear to the Court the plaintiffs are entitled to.

WARREN OLNEY,
OLNEY, PRINGLE & MANNON,
Attorneys for Plaintiffs.

[Endorsed]: Filed May 22, 1909. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.
[14]

Summons.

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial
Circuit, Northern District of California.*

ERNEST E. EVANS, ——— COLEMAN, and
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

Action brought in the said Circuit Court and the complaint filed in the office of the Clerk of the said Circuit Court, in the City and County of San Francisco.

WARREN OLNEY,
OLNEY, PRINGLE & MANNON,
1236 Merchants' Exchange Building,
San Francisco, California,
Attorney for Plaintiff.

To the President of the United States of America,
Greeting: To Standard Portland Cement Corporation, a Corporation, William J. Dingee and Irving A. Bachman, Defendants.

You are hereby directed to appear and answer the Complaint in an action entitled as above, brought against you in the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California, within ten days after the service on you of this Summons—if served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiffs will take judgment for any money or damages demanded in the complaint, as arising upon contract, or they will apply to the Court for any other relief demanded in the complaint. [15]

WITNESS the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 22d day of May, in the year of our Lord one thousand nine hundred and nine and of our independence the 133d.

[Seal]

SOUTHARD HOFFMAN,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

United States Marshal's office,
Northern District of California.

I hereby certify that I received the within Summons on the 22d day of May, 1909, and personally served the same on the 22d day of May, 1909, upon

Irving A. Bachman, one of the defendants therein named, by delivering to and leaving with Irving A. Bachman, one of said defendants named therein, personally, at the City and County of San Francisco in said District, a copy thereof, together with a copy of the Complaint, attached thereto.

C. T. ELLIOTT,

U. S. Marshal.

By Elmo Warner,

Office Deputy.

Dated at San Francisco this 22d day of May, 1909.

United States Marshal's Office,
Northern District of California.

I hereby certify that I received the hereunto annexed Summons on the 22d day of May, 1909, and personally served the same upon the Standard Portland Cement Corporation, a Corporation, one of the herein named defendants, by handing to and leaving an attested [16] copy of the annexed Summons, together with a copy of the Complaint attached thereto, with L. F. Young, the Secretary of the said Standard Portland Cement Corporation, a Corporation, personally, in the City and County of San Francisco, State and Northern District of California, and upon William J. Dingee, one of the herein named defendants, by handing to and leaving an attested copy of the annexed Summons, together with a copy of the Complaint attached thereto, with said William J. Dingee, personally, on the 24th day of May, 1909,

20 *Standard Portland Cement Corporation*

in the City and County of San Francisco, in said District.

C. T. ELLIOTT,
United States Marshal.
By B. F. Towle,
Office Deputy Marshal.

Dated at San Francisco, California, this 24th day of May, 1909.

[Endorsed]: Filed May 24, 1909. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.
[17]

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

ERNEST E. EVANS, ——— COLEMAN, and
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN.

Defendants.

Answer of Defendant Standard Portland Cement Corporation, a Corporation.

Now comes Standard Portland Cement Corporation, a Corporation, one of the defendants named in the above-entitled action, and for answer to the com-

plaint of plaintiff on file herein, admits, denies and alleges as follows:

I.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that the plaintiffs, or either or any of them, is or are, or was or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subject of King Edward VII, King of Great Britain and Ireland;

Denies that said plaintiffs, or any or either of them, are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman and Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it [18] to answer, and basing its denial upon that ground, denies that defendants William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof.

Denies that on the 5th day of May, 1908, or at any other time, or at all, this defendant Standard Portland Cement Corporation made or executed or delivered to said Evans, Coleman & Evans, or any or either of them, otherwise than as hereinafter alleged, its promissory or other note in the words and figures

or words or figures set forth and contained in the first cause of action in said complaint attempted to be alleged.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that at the same or any time, or as part of the same or any transaction, the defendants William J. Dingee or Irving A. Bachman, or either or both of them, endorsed said or any promissory note or notes, and denies that said defendants, or either or both of them, waived presentment or demand or protest or notice of nonpayment of said or any note; and denies that said endorsement, or any endorsement, or said waiver or any waiver, was written on the back of said or any note or notes, or was in the words or any words set forth and described in the first cause of action in said complaint attempted to be alleged; and denies that any endorsement or waiver was endorsed upon said or any promissory note before said note was delivered to said Evans, Coleman & Evans, or at any other time or at all, except as hereinafter alleged.

Admits that no part of said alleged promissory note, either of principal or interest, has been paid, but denies that the full or any principal sum of \$30,000, or any part thereof, with interest [19] at the rate of six per cent per annum, or together with any interest, compounded as in said alleged note alleged to have been provided, or otherwise, or at all, are due and owing, or due or owing, from this defendant to said plaintiff or any one else.

Alleges that this defendant has no information or

belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that the said plaintiffs or any or either of them are the owners and holders or owners or holders of said promissory note.

II.

Answering the second alleged cause of action in said complaint attempted to be set forth, this defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that the plaintiffs, or either or any of them, is or are, or was or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland.

Denies that said plaintiffs, or any or either of them, are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman & Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that defendants William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof. [20]

Denies that on or about the 5th day of May, 1908, or at any other time, or at all, said plaintiffs, or any

or either of them, sold or delivered to this defendant at its special instance and request, or special instance or request, or otherwise or at all certain or any bonds and stocks or bonds or stocks, to wit, any bond or bonds of the Northwestern Portland Cement Company, a corporation, of the par or other value of \$30,000, or any bond or bonds whatsoever; and denies that said plaintiffs, or any or either of them, did in any manner or at all sell or deliver to this defendant 300 or any number of shares of the capital or other stock of the said Northwestern Portland Cement Company, a corporation, or of any company, of the par or other value of \$30,000, or any share or shares of stock of any value whatsoever, or any share or shares of stock of said Northwestern Portland Cement Company, or of any company, except as hereinafter alleged; denies that at the said time of the alleged delivery of said bonds or stocks or at any other time or at all this defendant agreed to pay for said bonds or for said stocks or for either or any of them the sum of \$30,000, or any part thereof, except as hereinafter alleged; admits that this defendant has not paid the said sum of money or any part thereof, but denies that the whole or any part thereof is now or at any time has been due or owing from this defendant to said Evans, Coleman & Evans, or either or any of them, or to anyone else, together with legal or any interest thereon, from the said 5th day of May, 1908, or any other time or at all.

III.

Answering the third alleged cause of action in said complaint attempted to be set forth, this defendant

alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground denies that the plaintiffs, or either or any of them, is or are, or was or were, at all or any of the times in said [21] complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland.

Denies that said plaintiffs, or any or either of them, are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman and Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that defendants William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens, or residents of the State of California, or of the Northern District thereof.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that Charles D. Rand is, or at all or any of the times in said complaint mentioned was, an alien or resident of British Columbia, or a citizen of the Dominion of Canada or of the Kingdom of Great Britain and Ireland.

Denies that on the 5th day of May, 1908, or at any other time or at all, this defendant Standard Port-

land Cement Corporation made or executed or delivered to said Charles D. Rand, otherwise than as hereinafter alleged, its promissory or other note in the words and figures or words or figures set forth and contained in the third cause of action in said complaint attempted to be alleged.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that at the same, or any time, or as part of the same or any transaction, the defendant William J. Dingee [22] or Irving A. Bachman, or either or both of them, endorsed said or any promissory note or notes, and denies that said defendants, or either or both of them, waived presentment or demand or protest or notice of nonpayment of said or any note; and denies that said endorsement, or any endorsement, or said waiver or any waiver, was written on the back of said or any note or notes, or was in the words or any words set forth and described in the third cause of action in said complaint attempted to be alleged; and denies that any endorsement or waiver was endorsed upon said or any promissory note before said note was delivered to said Charles D. Rand, or at any other time or at all, except as hereinafter alleged.

Admits that no part of said alleged promissory note, either of principal or interest, has been paid, but denies that the full or any principal sum of \$5,000, or any part thereof, with interest at the rate of six per cent per annum, or together with any interest, compounded as in said alleged note alleged to have been provided, or otherwise, or at all, are due

and owing, or due or owing, from this defendant to said plaintiff or anyone else.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that the said plaintiffs, or any or either of them, are the owners and holders or owners or holders of said promissory note.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that said Charles D. Rand has assigned and endorsed or assigned or endorsed to said plaintiffs or either or any of them, or has assigned or endorsed at all said or any promissory note or notes; denies that said plaintiffs, or either or any of them, are now the owners and holders or owners or holders thereof. [23]

IV.

Answering the fourth alleged cause of action in said complaint attempted to be set forth, this defendant alleged that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that the plaintiffs, or either or any of them, is or are, or was or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland.

Denies that said plaintiffs, or any or either of them, are, or at all or any of the times in said complaint mentioned were, partners in business, or doing

business under the firm name of Evans, Coleman & Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that defendants William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that Charles D. Rand is, or at all or any of the times in said complaint mentioned was, an alien or resident of British Columbia, or a citizen of the Dominion of Canada or of the Kingdom of Great Britain and Ireland.

Denies that on or about the 5th day of May, 1908, or at any other time, or at all, said plaintiffs, or any or either of them, sold or delivered to this defendant at its special instance and request, or special instance or request, or otherwise or at all, [24] certain or any bonds and stocks or bonds or stocks, to wit, any bond or bonds of the Northwestern Portland Cement Company, a corporation, of the par or other value of \$5,000, or any bond or bonds whatsoever; and denies that said plaintiffs, or any or either of them, did in any manner or at all sell or deliver to this defendant 50 or any number of shares of the capital or other stock of the said Northwestern Portland Cement Company, a corporation, or of any company, of the

par or other value of \$5,000, or any share or shares of stock of any value whatsoever, or any share or shares of stock of said Northwestern Portland Cement Company, or of any company, except as hereinafter alleged; denies that at the said time of the alleged delivery of said bonds or stocks or at any other time or at all this defendant agreed to pay for said bonds or for said stocks or for either or any of them the sum of \$5,000, or any part thereof, except as hereinafter alleged; admits that this defendant has not paid the said sum of money or any part thereof, but denies that the whole or any part thereof is now or at any time has been due or owing from this defendant to said Charles D. Rand, or to anyone else, together with legal or any interest thereon, from the said 5th day of May, 1908, or any other time or at all.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that said Charles D. Rand has assigned to the said plaintiffs, or has assigned at all his claim against this defendant for the alleged purchase price of said bonds or stocks, or either or any of them, and denies that said plaintiffs are now, or ever have been, the owners or holders of said claim.

V.

Answering the fifth alleged cause of action in said complaint attempted to be set forth, this defendant alleges that [25] it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground denies that the plaintiffs, or either or any of them, is or are, or was

or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland.

Denies that said plaintiffs, or any or either of them, are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman & Evans; alleged that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that defendant William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that T. R. Stockett, Trustee, is or at all or any of the times in said complaint mentioned was, an alien or resident of British Columbia, or a citizen of the Dominion of Canada or of the Kingdom of Great Britain and Ireland.

Denies that on the 5th day of May, 1908, or at any other time or at all, this defendant Standard Portland Cement Corporation made or executed or delivered to said T. R. Stockett, Trustee, otherwise than as hereinafter alleged, its promissory or other note in the words and figures or words or figures set

forth and contained in the fifth cause of action in said complaint attempted to be alleged. [26]

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that at the same, or any time, or as a part of the same or any transaction, the defendants William J. Dingee or Irving A. Bachman, or either or both of them, endorsed said or any promissory note or notes, and denies that said defendants, or either or both of them, waived presentment or demand or protest or notice of nonpayment of said or any note; and denies that said endorsement, or any endorsement, or said waiver or any waiver, was written on the back of said or any note or notes, or was in the words or any words set forth and described in the fifth cause of action in said complaint attempted to be alleged; and denies that any endorsement or waiver was endorsed upon said or any promissory note before said note was delivered to said T. R. Stockett, Trustee, or at any other time or at all, except as hereinafter alleged.

Admits that no part of said alleged promissory note, either of principal or interest, has been paid, but denies that the full or any principal sum of \$3,000 or any part thereof, with interest at the rate of six per cent per annum, or together with any interest, compounded as in said alleged note alleged to have been provided, or otherwise, or at all, are due and owing, or due or owing, from this defendant to said plaintiff or anyone else.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to an-

swer, and basing its denial upon that ground, denies that the said plaintiffs or any or either of them are the owners and holders or owners or holders of said promissory note.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that said T. R. Stockett, Trustee, has assigned and endorsed or assigned or endorsed to [27] said plaintiffs or either or any of them, or has assigned or endorsed at all said or any promissory note or notes; denies that said plaintiffs or either or any of them are now the owners and holders or owners or holders thereof.

VI.

Answering the sixth alleged cause of action in said complaint attempted to be set forth, this defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground denies that the plaintiffs, or either or any of them, is or are, or was or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland.

Denies that said plaintiffs, or any or either of them are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman & Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it

to answer, and basing its denial upon that ground, denies that defendants Willaim J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that T. R. Stockett, Trustee, is or at all or any of the times in said complaint mentioned was, an alien or resident of British Columbia, or a citizen of the Dominion of Canada or of the Kingdom of Great Britain and Ireland. [28]

Denies that on or about the 5th day of May, 1908, or at any other time or at all, said plaintiffs or any or either of them sold or delivered to this defendant at its special instance and request, or special instance or request, or otherwise or at all certain or any bonds and stocks or bonds or stocks, to wit, any bond or bonds of the Northwestern Portland Cement Company, a corporation, of the par or other value of \$3,000, or any bond or bonds whatsoever; and denies that said plaintiffs, or any or either of them, did in any manner or at all sell or deliver to this defendant 30 or any number of shares of the capital or other stock of the said Northwestern Portland Cement Company, a corporation, or of any company, of the par or other value of \$3,000, or any share or shares of stock of any value whatsoever, or any share or shares of stock of said Northwestern Portland

Cement Company, or of any company, except as hereinafter alleged; denies that at the said time of the alleged delivery of said bonds or stocks or at any other time or at all this defendant agreed to pay for said bonds or for said stocks or for either or any of them the sum of \$3,000, or any part thereof, except as hereinafter alleged; admits that this defendant has not paid the said sum of money or any part thereof, but denies that the whole or any part thereof is now or at any time has been due or owing from this defendant to said T. R. Stockwell, Trustee, or to anyone else, together with legal or any interest thereon, from the said 5th day of May, 1908, or any other time or at all.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that said T. R. Stockett, Trustee, has assigned to the said plaintiffs, or has assigned at all his claim against this defendant for the alleged purchase price of said bonds or stocks, or either or any of them, and denies that said plaintiffs are now, or ever have been, the owners or holders of said claim. [29]

VII.

Answering the seventh alleged cause of action in said complaint attempted to be set forth, this defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground denies that the plaintiffs, or either or any of them is or are, or was or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia,

or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland.

Denies that said plaintiffs, or any or either of them are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman & Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that defendants William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that Thomas Graham is or at all or any of the times in said complaint mentioned was, an alien or resident of British Columbia, or a citizen of the Dominion of Canada or of the Kingdom of Great Britain and Ireland.

Denies that on the 5th day of May, 1908, or at any other time or at all, this defendant Standard Portland Cement Corporation made or executed or delivered to said Thomas Graham, otherwise than as hereinafter alleged, its promissory or other note in the words and figures or words or figures set forth and contained [30] in the seventh cause of action in said complaint attempted to be alleged.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that at the same, or any time, or as part of the same or any transaction, the defendants William J. Dingee or Irving A. Bachman, or either or both of them, endorsed said or any promissory note or notes, and denies that said defendants, or either or both of them, waived presentment or demand or protest or notice of nonpayment of said or any note; and denies that said endorsement, or any endorsement, or said waiver or any waiver, was written on the back of said or any note or notes, or was in the words or any words set forth and described in the seventh cause of action in said complaint attempted to be alleged; and denies that any endorsement or waiver was endorsed upon said or any promissory note before said note was delivered to said Thomas Graham, or at any other time or at all, except as hereinafter alleged.

Admits that no part of said alleged promissory note, either of principal or interest, has been paid, but denies that the full or any principal sum of \$1,000, or any part thereof, with interest at the rate of six per cent per annum, or together with any interest, compounded as in said alleged note alleged to have been provided, or otherwise, or at all, are due and owing, or due or owing, from this defendant to said plaintiff or anyone else.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies

that the said plaintiffs or any or either of them are the owners and holders or owners or holders of said promissory note.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing [31] its denial upon that ground, denies that said Thomas Graham has assigned and endorsed or assigned or endorsed to said plaintiffs or either or any of them, or has assigned or endorsed at all said or any promissory note or notes; denies that said plaintiffs or either or any of them are now the owners and holders or owners or holders thereof.

VIII.

Answering the eighth alleged cause of action in said complaint attempted to be set forth, this defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground denies that the plaintiffs, or either or any of them is or are, or was or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland;

Denies that said plaintiffs, or any or either of them are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman & Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground,

denies that defendants William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that Thomas Graham is or at all or any of the times in said complaint mentioned was, an alien or resident of British Columbia, or a citizen of the Dominion of Canada [32] or of the Kingdom of Great Britain and Ireland.

Denies that on or about the 5th day of May, 1908, or at any other time or at all said plaintiffs or any or either of them sold or delivered to this defendant at its special instance and request, or special instance or request, or otherwise or at all certain or any bonds and stocks, or bonds or stocks, to wit, any bond or bonds of the Northwestern Portland Cement Company, a corporation, of the par or other value of \$1,000, or any bond or bonds whatsoever; and denies that said plaintiffs or any or either of them did in any manner or at all sell or deliver to this defendant 10 or any number of shares of the capital or other stock of the said Northwestern Portland Cement Company, a corporation, or of any company, of the par or other value of \$1,000, or any share or shares of stock of any value whatsoever, or any share or shares of stock of said Northwestern Portland Cement Company, or of any company, except as

hereinafter alleged; denies that at the said time of the alleged delivery of said bonds or stocks or at any other time or at all this defendant agreed to pay for said bonds or for said stocks or for either or any of them the sum of \$1,000, or any part thereof, except as hereinafter alleged; admits that this defendant has not paid the said sum of money or any part thereof, but denies that the whole or any part thereof is now or at any time has been due or owing from this defendant to said Thomas Graham, or to anyone else, together with legal interest thereon, from the said 5th day of May, 1908, or any other time or at all.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that said Thomas Graham has assigned to the said plaintiffs, or has assigned at all his claim against this defendant for the alleged purchase price of said bonds or stocks, or either or any of them, and denies that said plaintiffs are now, or ever have been, the owners or holders of said claim. [33]

SECOND.

And as a further, separate and distinct answer and defense to the first, second, third, fourth, fifth, sixth, seventh and eighth alleged causes of action in said complaint attempted to be set forth, this defendant alleges:

I.

That the Standard Portland Cement Company is now, and ever since the 27th day of January, 1902,

has been, a corporation duly organized and existing under and by virtue of the constitution and laws of the State of California, with a capitalization of \$2,000,000, divided into 20,000 shares of the par value of \$100 per share, with its principal place of business in the City and County of San Francisco, State of California, which said Standard Portland Cement Company, ever since its incorporation as aforesaid down to and until the incorporation of the Standard Portland Cement Corporation, and the assumption by said Standard Portland Cement Corporation of the assets, liabilities and business of said Standard Portland Cement Company, as hereinafter alleged, was engaged in the manufacture and sale of "Portland Cement."

II.

That this defendant, Standard Portland Cement Corporation, is now, and ever since the 25th day of February, 1907, has been, a corporation duly organized and existing under and by virtue of the constitution and laws of the State of California, with a capitalization of \$4,000,000, divided into 40,000 shares of the par value of \$100 per share, with its principal place of business in the City and County of San Francisco, State of California, which said Standard Portland Cement Corporation, upon its incorporation as aforesaid, purchased all of the assets, including the plant for the manufacture of "Portland Cement," and assumed all of [34] the liabilities of said Standard Portland Cement Company, and assumed the performance of all of the contracts of said Standard Portland Cement Company, and ever since

said date has carried on, and continues now to carry on, the business of the manufacture and sale of "Portland Cement."

III.

That the Santa Cruz Portland Cement Company is now, and ever since the 2d day of June, 1905, has been, a corporation duly organized and existing under and by virtue of the constitution and laws of the State of California, with a capitalization of \$5,000,000 divided into 50,000 shares of the par value of \$100 per share, with its principal place of business in the City and County of San Francisco, State of California, which said Santa Cruz Portland Cement Company, ever since its incorporation as aforesaid has been, and is now, engaged in the manufacture and sale of "Portland Cement."

IV.

That the Northwestern Portland Cement Company is now, and ever since the 27th day of August, 1906, has been, a corporation duly organized and existing under and by virtue of the constitution and laws of the State of California, with a capitalization of \$5,000,000, divided into 50,000 shares of the par value of \$100 per share, with its principal place of business in the City and County of San Francisco, State of California.

V.

That said Standard Portland Cement Company and said Standard Portland Cement Corporation were promoted and organized by defendants William J. Dingee and Irving A. Bachman, and said Santa Cruz Portland Cement Company was promoted and

organized by said defendants William J. Dingee and Irving A. Bachman, with boards of directors consisting of five members and no more; that said William J. Dingee and Irving A. Bachman were the owners and holders [35] or controlled and voted a majority of the capital stock of said Standard Portland Cement Company and of said Santa Cruz Portland Cement Company, and were large holders of the capital stock of said Standard Portland Cement Corporation, and as such controlled and dictated the election of the members of the respective boards of directors of said corporations, and at all elections held for the election thereof, named and elected all of the members of said boards of directors, and procured and caused said William J. Dingee, Irving A. Bachman and one Edward McGary to be elected such members of such boards of directors and of each and all of them; that said William J. Dingee and Irving A. Bachman and Edward McGary, upon the organization of such boards of directors so elected as aforesaid, procured and caused the election of said William J. Dingee as president, and said Irving A. Bachman and said Edward McGary as vice-presidents of said Santa Cruz Portland Cement Company, and procured and caused said Irving A. Bachman to be elected president, and said William J. Dingee and Edward McGary to be elected vice-presidents of said Standard Portland Cement Company and said Standard Portland Cement Corporation; that as such members of said boards of directors and as such officers thereof said William J. Dingee and Irving A. Bachman and

Edward McGary constituted the majority of the boards of directors of said corporations and of each and all of them, and said William J. Dingee, Irving A. Bachman and Edward McGary there possessed and exercised full management and control of said corporations and of each and all of them.

That said Edward McGary, for many years prior to his election to such vice-presidencies as aforesaid, had been in the employ of said William J. Dingee and had been intimately associated with said William J. Dingee in enterprises controlled and managed by said William J. Dingee, and that, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, thereafter the actions of said Edward [36] McGary, as a member of said boards of directors and as such vice-president thereof, were taken and had by said Edward McGary at the instance and request and under the dictation of said William J. Dingee.

VI.

That defendant is informed and believes, and upon such information and belief alleges the fact to be, that the Western Fuel Company is a corporation organized and existing under and by virtue of the constitution and laws of the State of California, with its principal place of business in the City and County of San Francisco, where it is authorized by law to engage in, and has been engaged in, among other things, the marketing of "Portland Cement."

VII.

That of said Western Fuel Company one John L. Howard was, during the month of March, 1906,

president and general manager, and the plaintiff herein, D. C. Norcross, an employee thereof, was its secretary; that on or about the first day of March, 1906, said William J. Dingee and said Irving A. Bachman and said John L. Howard procured and caused said Standard Portland Cement Company to enter into a contract and agreement with said Western Fuel Company, wherein and whereby said Western Fuel Company was commissioned and appointed the general and exclusive sales agent and undertook the exclusive sale and disposition of the entire output and production of said Standard Portland Cement Company, which said contract of appointment of said Western Fuel Company as such general agent was by its items declared to be and become operative as of said first day of March, 1906, and was to continue in full force and effect until the 31st day of August, 1911, unless sooner terminated as therein provided; that said contract of appointment was so made and executed as aforesaid, subject to the express condition and proviso "that it shall be agreed and understood [37] between the parties to said contract that the said contract may be terminated by the Standard Portland Cement Company at its option in the event that said John L. Howard, now the president of the Western Fuel Company, shall, at any time, or for any reason, cease to be the chief executive officer of said corporation.

VIII.

That thereafter, by and with the consent of said Standard Portland Cement Company, procured and caused to be given as aforesaid by said William J.

Dingee and said Irving A. Bachman and said John L. Howard, said contract of appointment of said Western Fuel Company, as such exclusive and general sales agent, was, on or about the 30th day of June, 1906, expressly assigned, transferred and set over unto the Western Building Material Company, a corporation, organized and existing under and by virtue of the constitution and laws of the State of California, of which said Western Building Material Company said John L. Howard was also president and said D. C. Norcross was also secretary, and which said assignment and transfer or said contract and the consent of said Standard Portland Cement Company thereto was made, caused to be given and procured by said William J. Dingee, Irving A. Bachman and John L. Howard, likewise subject to the express condition "that the Standard Portland Cement Corporation shall have the right to terminate said contract at its option, in the event that said John L. Howard shall, at any time or for any reason, cease to be the chief executive officer of the Western Building Material Company."

IX.

That as a result of the said contract of appointment as aforesaid, said John L. Howard, as such chief executive officer and general manager of said Western Fuel Company and of said Western Building Material Company, was given and became possessed of the control of the output and production of the said Standard Portland [38] Cement Company and of the said Standard Portland Cement Corporation, and of the marketing and sale thereof,

and by reason of said exclusive control of said output and production said John L. Howard also became possessed of the only source from which said Standard Portland Cement Company and said Standard Portland Cement Corporation derived their respective incomes, which incomes were derived from the sale of their product and from sales made by said corporations of which said Howard was so president and chief executive officer.

X.

That thereafter and on or about the 1st day of March, 1906, said William J. Dingee and Irving A. Bachman, so controlling said Santa Cruz Portland Cement Company, and said John L. Howard, as President and chief executive officer of said Western Fuel Company, as aforesaid, caused and procured the said Santa Cruz Portland Cement Company and said Western Fuel Company to enter into a contract to continue, while said John L. Howard was such President and chief executive officer of said Western Fuel Company, under the terms and provisions of which said contract said Western Fuel Company was appointed the exclusive and general sales agent for the sale and disposition of the entire product of the said Santa Cruz Portland Cement Company, subject also to the condition that in the event of said John L. Howard ceasing to be the chief executive officer of said Western Fuel Company said contract should, at the option of the said Santa Cruz Portland Cement Company, be terminated, which said contract was thereafter and on or about the 8th day of March, 1906, expressly assigned, trans-

ferred and set over to said Western Building Material Company, subject to the same terms, conditions and proviso.

That said contract also vested in said John L. Howard, as such President and chief executive officer of said corporations, the control of the output and production of said Santa Cruz Portland [39] Cement Company and of the marketing and sale thereof, by reason, of which exclusive control of said output and said production said Howard, as such President and chief executive officer, also became possessed of the control of the only source from which said Santa Cruz Portland Cement Company derived its income.

XI.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be; thereafter and on the 27th day of August, 1906, said William J. Dingee and Irving A. Bachman, in co-operation with and assisted by said John L. Howard, did promote and organize a corporation, known and designated as the Northwestern Portland Cement Company, with a capitalization of five million dollars, divided into 50,000 shares of the par value of \$100 per share, and with a board of directors consisting of five members; that upon the incorporation of said Northwestern Portland Cement Company as aforesaid, said William J. Dingee, Irving A. Bachman and John L. Howard caused and procured the election, and named all the members of said Board of Directors, including the election of said William J. Dingee, Irving A. Bachman and

Edward McGary; that until the 23d day of July, 1908, said William J. Dingee, Irving A. Bachman and Edward McGary constituted the majority of said Board of Directors, and elected said William J. Dingee President and said Irving A. Bachman and Edward McGary Vice-presidents of said corporation, and were possessed of and exercised the entire management of said company and control of the Board of Directors thereof.

XII.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, said Dingee, Bachman and said John L. Howard caused said Northwestern Portland Cement Company to issue to said Irving A. Bachman 49,995 shares [40] out of a total capitalization of 50,000 shares of the capital stock of said corporation; that thereafter, of said 49,995 shares so issued as afore-said to said Irving A. Bachman, said John L. Howard received 8,000 and more shares, said William J. Dingee received 15,000 and more shares, and said Irving A. Bachman received 15,000 and more shares.

XIII.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, thereafter said William J. Dingee, said Irving A. Bachman and said John L. Howard caused and procured said Northwestern Portland Cement Company and the stockholders and directors thereof to authorize the incurring of a bonded indebtedness of said Company in the sum of \$2,000,000, represented by 2,000 bonds of the denomination of \$1,000

each, and secured by a mortgage or deed of trust, hypothecating and pledging all of the properties of said company then owned or held or thereafter to be acquired by it for the redemption thereof.

XIV.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, it was the intention and purpose of said William J. Dingee, Irving A. Bachman and John L. Howard, in procuring and causing the incorporation and organization of said Northwestern Portland Cement Company that said company should engage in the manufacture and production of "Portland Cement," with its plant and factory situated in the County of Whatcom, State of Washington, upon certain lands theretofore located in part by said Howard in the promotion of said company, and title to which said portion of said lands, through United States patent, was subsequently acquired by said Howard individually; and that it was also the intention and purpose of said William J. Dingee, Irving A. Bachman and John L. Howard in causing and procuring [41] the creation of said bonded indebtedness of said company as aforesaid, and said William J. Dingee, Irving A. Bachman and John L. Howard did cause said Northwestern Portland Cement Company to represent and declare in and by the resolution of the Board of Directors of said corporation authorizing the incurring of said bonded indebtedness, and said William J. Dingee, Irving A. Bachman and John L. Howard did represent and pretend to intending purchasers of said bonds, that

it was the intent and purpose of said company and of said William J. Dingee, Irving A. Bachman and John L. Howard, and that said bonds had been authorized and were being sold, to the end and for the purpose, among other things, of providing moneys to acquire property and to construct and equip the factory and plant of said company.

XV.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, said William J. Dingee, Irving A. Bachman and John L. Howard procured and caused said Northwestern Portland Cement Company to authorize the immediate issuance and sale of 900 of said bonds numbered consecutively from 1 to 900, both numbers included; that thereupon said Irving A. Bachman did return to the treasury of the Northwestern Portland Cement Company out of said 49,995 shares so issued to said Bachman, as aforesaid, 9,000 shares of the capital stock of said company, with the understanding and agreement that the said 9,000 shares so returned should be reissued, transferred and delivered to the purchasers of said 900 bonds in the proportion of ten shares of said stock for each of said bonds so sold and purchased.

That theretofore said John L. Howard had in his own name on his own behalf, and on behalf of certain individuals and corporations, subscribed for and agreed to purchase 300 of said bonds. [42]

XVI.

That of said 900 bonds so offered for sale as aforesaid the trustee in said mortgage or deed of trust

named has issued and delivered to said Northwestern Portland Cement Company 400 bonds, numbered consecutively from 1 to 400, both numbers included, and thereafter said Northwestern Portland Cement Company, so managed and controlled as aforesaid, sold and delivered to purchasers thereof 295 of said 400 bonds, the bonds so sold and delivered being numbered consecutively from 1 to 295, both numbers included; that of said 300 bonds so subscribed for and agreed to be purchased by said John L. Howard there were actually sold and delivered to said John L. Howard, or for or on account of his said subscription so made as aforesaid, 100 bonds as follows:

On January 5, 1907, 50 bonds, numbered consecutively from 1 to 50, both numbers included;

On January 18, 1907, 45 bonds, numbered consecutively from 123 to 167, both numbers included; and

On March 14, 1907, 5 of said bonds, numbered consecutively from 213 to 217, both numbers included.

That upon such delivery to said John L. Howard of said bonds as aforesaid, said Northwestern Portland Cement Company did transfer and deliver to said John L. Howard out of and as a part of said 9,000 shares of said stock so returned to the treasurer of said company as aforesaid, ten shares of said stock for each one of said 100 bonds so delivered as aforesaid.

XVII.

That thereafter and subsequent to the delivery of said bonds to said Howard as aforesaid, said Howard, as this defendant is informed and believes and therefore alleges, did transfer and deliver to Evans, Cole-

man & Evans, 30 of said bonds, to said Charles D. Rand 5 of said bonds, to said T. R. Stockett, Trustee, 3 of said bonds, and to Thomas Graham 1 of said bonds. [43]

XVIII.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, there was realized from the sale of said 295 bonds so sold and delivered as aforesaid the sum of \$295,000, or thereabouts; that said sum of \$295,000 or thereabouts was not applied by said Northwestern Portland Cement Company to, nor expended in, the acquisition of property or the construction or equipment of said plant or factory, but, on the contrary, the greater portion thereof, the exact amount of which is to this defendant unknown, was diverted to other and different uses and purposes and to the use and benefit of other and different enterprises, which said Dingee and said Bachman controlled, and in which said Howard was interested.

XIX.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, by reason of the diversion of the funds of said Northwestern Portland Cement Company from the uses and purposes to which said Dingee, and said Bachman had caused the Board of Directors of said company to declare the intention and purpose of said Company to devote the same and had represented to the purchasers of said bonds that the funds realized from the sale thereof would be used, and by reason of the cessation of active operations in the construc-

tion and equipment of said plant, said bonds became and were greatly depreciated in value, and ever since have been and are now and were on the 5th day of May, 1908, without market value.

XX.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, certain purchasers of said bonds, and more particularly those purchasers of said bonds for and on whose account said bonds so delivered to [44] said John L. Howard had been so purchased as aforesaid, and more particularly Evans, Coleman & Evans, Plaintiffs, who had so purchased through said John L. Howard 30 of said bonds, becoming and being dissatisfied with the action of said William J. Dingee and said Irving A. Bachman in their failure to cause said Northwestern Portland Cement Company to proceed with the acquisition of properties and the construction and equipment of said plant and factory, undertook to and did cause the books and affairs of said Northwestern Portland Cement Company to be investigated and expeted, with the result that said purchasers of said bonds became aware and informed of the diversion of said funds to said other and different enterprises and purposes and of the entire cessation of all operations in the construction and equipment of said plant and factory; that thereafter, and upon the discovery of said diversions and said cessation of operations as aforesaid, said purchasers of said bonds threatened the prosecution of the said officers and members of the Board of Directors of the said Northwestern Portland Cement Com-

pany, and more particularly said William J. Dingee and said Irving A. Bachman, as the President and Vice-president thereof, and demanded that said William J. Dingee and said Irving A. Bachman and said John L. Howard cause and procure said Northwestern Portland Cement Company to redeem and retire said bonds, or that said William J. Dingee and said Irving A. Bachman individually repurchase said bonds and the stock of said Northwestern Portland Cement Company so issued as a bonus as aforesaid, and did then and there demand of said John L. Howard, as the nominal subscriber for and purchaser of said bonds and the person through whom said bonds had been so purchased as aforesaid, that said John L. Howard do undertake for and on behalf of said bondholders, and each and all of them, to induce said Northwestern Portland Cement Company or said William J. Dingee or said Irving A. Bachman to repurchase or redeem said bonds and said stocks.

[45]

XXI.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, thereupon said John L. Howard, as such representative and agent of said bondholders and more particularly as the representative and agent of said Evans, Coleman & Evans, said Charles D. Rand, said T. R. Stockett Trustee, and said Thomas Graham, and for and on their behalf, did undertake to secure from said William J. Dingee and Irving A. Bachman some arrangement satisfactory to said bondholders, and each and all of them, and designed

to secure or repay them for all the moneys they had theretofore invested in the purchase of said bonds.

XXII.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, thereupon said John L. Howard, as such stockholder and promoter of said Northwestern Portland Cement Company, and as such President and chief executive officer of said Western Building Material Company, controlling the sale and marketing of the entire output and production of said companies as hereinbefore alleged, and as such general agent, in the control of the income and sources of revenue of said companies, did demand of said William J. Dingee and said Irving A. Bachman that some arrangement satisfactory to said bondholders and designed to secure or repay them for the moneys which they had theretofore invested in said bonds so purchased by or through said John L. Howard, as aforesaid, should be made by said William J. Dingee and said Irving A. Bachman, by or through their control of the said companies and the boards of directors thereof.

XXIII.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, thereupon said William J. Dingee and said Irving A. Bachman, as Presidents [46] and Vice-presidents, respectively, of said Northwestern Portland Cement Company and of this defendant, and in violation and disregard of their obligations and duties as such officers and directors, conspiring and

confederating with said John L. Howard, as the representative and agent of said bondholders and as a stockholder and promoter thereof, and in compliance with the demand of said John L. Howard so made as aforesaid, did undertake and agree that said William J. Dingee and said Irving A. Bachman would, by and with the consent and assistance of the said John L. Howard, cause this defendant, through their control of the Board of Directors thereof, to make and execute its several promissory notes, dated the first day of May, 1908, payable to said respective bondholders one year from their said date, wherein this said defendant should undertake and promise to pay to said bondholders the face value of said bonds so sold as aforesaid by and through said John L. Howard to said Evans, Coleman & Evans, said Charles D. Rand, said T. R. Stockett, Trustee, and said Thomas Graham; that said notes should be so executed as aforesaid upon the delivery to the said Northwestern Portland Cement Company by said bondholders of the bonds respectively held by them, and of the shares of stock theretofore issued as a bonus for the purchase thereof; and that upon the execution thereof said William J. Dingee and Irving A. Bachman should endorse the same and should thereupon be absolved by said bondholders and each of them, from any further or other liability.

XXIV.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, as a part of the same transaction, and as a further and additional inducement for the action

of said William J. Dingee and said Irving A. Bachman in so causing and procuring this defendant to execute said [47] notes, and each and all of them, said John L. Howard did agree to and did endorse to the order of said William J. Dingee and return and redeliver to him for the account of said William J. Dingee and said Irving A. Bachman certificates of the capital stock of said Northwestern Portland Cement Company representing 8,000 shares, more or less, which said Howard had received as hereinbefore alleged for his services and assistance in the promotion and incorporation of said Northwestern Portland Cement Company and the sale of said bonds.

XXV.

That thereupon said William J. Dingee and said Irving A. Bachman, for the purpose of carrying into effect said conspiracy and agreement so made as aforesaid with said John L. Howard, did cause a special meeting of the Board of Directors of this defendant to be held on the 5th day of May, 1908, at which meeting there appeared and attended said William J. Dingee, said Irving A. Bachman and said Edward McGary and no one else of the said members of said Board of Directors; that at said meeting so attended as aforesaid and during the absence from said meeting of the remaining members of said Board of Directors, and in furtherance of said conspiracy and agreement, said William J. Dingee introduced and moved the passage of a certain resolution, authorizing and directing said William J. Dingee or said Irving A. Bachman or said Edward McGary to purchase 100 bonds of said Northwest-

ern Portland Cement Company, together with the shares of stock of said Company theretofore issued to the holders of said bonds, for the sum of \$100,000, and did attempt thereby to authorize said William J. Dingee, said Irving A. Bachman and said Edward McGary to give the obligation or obligations of this defendant in payment therefor to the holders of said stocks and bonds, which said resolution and the motion for the adoption thereof were seconded by said Edward McGary and declared by said Irving A. Bachman to be carried [48] by the unanimous vote of said William J. Dingee, said Irving A. Bachman and said Edward McGary, a copy of the minutes of which said special meeting, together with said resolution, is herunto annexed, hereby referred to, made a part hereof, and marked Exhibit "A."

XXVI.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, said action of said Board of Directors in the adoption of said resolution as aforesaid was so taken at the special instance and request of said John L. Howard, and for the purpose of carrying into effect and making effective said conspiracy and said agreement so entered into as aforesaid by said John L. Howard as such representative and agent of said bondholders, and said William J. Dingee and said Irving A. Bachman; the passage and adoption of said resolution was so procured and caused to be done by said Howard, said Dingee and said Bachman, with the full understanding and knowledge that said bonds and said shares of stock of said Northwestern

Portland Cement Company, and each and all of them were greatly depreciated in value and of no market value, and not otherwise, and was and constituted a fraud on this defendant and upon the stockholders of this defendant.

XXVII.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, thereafter, and on said 5th day of May, 1908, for the purpose of carrying into effect and making effective said conspiracy and said agreement, said Bachman and said Dingee and said Howard did procure and cause to be executed the promissory notes of this defendant in favor of said Evans, Coleman & Evans for the sum of \$30,000, in favor of said Charles D. Rand for the sum of \$5,000, in favor of said T. R. [49] Stockett, Trustee, for the sum of \$3,000, and in favor of said Thomas Graham for the sum of \$1,000, respectively, which said promissory notes are the same promissory notes referred to and set forth in plaintiff's complaint herein.

XXVIII.

That said promissory notes and each and all of them were so executed and delivered by said William J. Dingee to said John L. Howard and delivered by said John L. Howard to said Evans, Coleman & Evans, said Charles D. Rand, said T. R. Stockett, Trustee, and said Thomas Graham, without the delivery by said Evans, Coleman & Evans or said Charles D. Rand, or said T. R. Stockett, Trustee, or said Thomas Graham, or by said John L. Howard, or either or any of them, to this defendant of any

of the bonds or stocks, as a consideration for the purchase of which, said notes and each and all of them were to be executed and delivered as aforesaid, but on the contrary, as this defendant is informed and believes, and therefore alleges the fact to be, said bonds and said stocks and each and all of them were in fact and in truth returned and redelivered by said John L. Howard and said William J. Dingee to the said Northwestern Portland Cement Company, and that said bonds and each and all of them were thereafter placed among, and considered as the assets of, said Northwestern Portland Cement Company, and said bonus stock and each and every share thereof was returned to the treasury of the said Northwestern Portland Cement Company; that this defendant did not, at the time of the execution and delivery of said notes as aforesaid, nor has it at any time since, nor has it at all, received any bonds or stock or any thereof.

XXIX.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, said promissory notes in which said Evans, Coleman & Evans, Charles D. Rand, [50] T. R. Stockett, Trustee, and Thomas Graham are named as payees, and each and all of them, and said alleged claims against this defendant for the said purchase price of said bonds and stocks, were assigned to said plaintiff, if said promissory notes or said claims, or any or either of them, were assigned at all, which this defendant denies were so assigned, after maturity, and without consideration, and for the sole

and only purpose of enabling plaintiff to commence and prosecute this action.

WHEREFORE, this defendant prays to be hence dismissed with its costs of suit.

MORRISON, COPE & BROBECK,
Attorneys for Defendant Standard Portland Cement
Corporation, a Corporation.

State of California,
City and County of San Francisco,—ss.

Frank H. Herbert, being first duly sworn, deposes and says: That he is an officer, to wit: Assistant Secretary of the Standard Portland Cement Corporation, one of the defendants named in the foregoing action; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

FRANK H. HERBERT.

Subscribed and sworn to before me, this 2d day of November, 1909.

[Seal] ADELINE COPELAND,
Notary Public in and for the City and County of San
Francisco, State of California. [51]

EXHIBIT "A."

Office of the

STANDARD PORTLAND CEMENT CORPORATION.

Crocker Building,
San Francisco, Cal.

May 5, 1908.

A special meeting of the Directors of the Standard Portland Cement Corporation was held at the office of the Company, Rooms 311-316 Crocker Building, San Francisco, Cal., at the hour of 3 o'clock P. M., pursuant to the call of the President.

Proof was first made that notice had been given of this special meeting in accordance with the By-Laws.

The following Directors were present:

William J. Dingee,
Irving A. Bachman,
Edward McGary.

Absent:

F. W. Henshaw,
Garret W. McEnerney.

President Irving A. Bachman presided.

On motion of Director Dingee, seconded by Director McGary, the following resolution was unanimously adopted:

Resolved, that the President or Vice-President or either of the Vice-Presidents of this Corporation be, and he is hereby authorized and directed on behalf of this Corporation to buy One hundred (100) bonds of the Northwestern Portland Cement Com-

pany for One Hundred Thousand Dollars (\$100,000), together with the shares of stock of said Company, which shares have heretofore been issued to the holders of said bonds, in the proportion of one (1) share of stock for each and every hundred dollars of the amount of said bonds. And he is further authorized to give the obligation or the obligations of this Corporation in payment therefor to each person, or persons, from whom such bonds and shares shall be bought, which obligations shall be executed by him under the name of this Corporation and attested by the Secretary under the corporate seal, and shall be made payable on or before one (1) year after May 1st, 1908, and shall bear interest at the rate of six per cent (6%) per annum from said date until paid; interest to be made payable semi-annually, and to be compounded if not so paid. He is further authorized, when such obligation or obligations shall become due, and if then unpaid, to renew the same from time to time until the amount due is paid in full.

There being no further business before the Board the meeting adjourned.

(Signed) L. F. YOUNG,

Secretary.

Due service and receipt of a copy of the within Answer is hereby admitted this 3d day of November, 1909.

OLNEY, PRINGLE & MANNON,

Attorneys for Plaintiffs.

[Endorsed]: Filed Nov'r 3, 1909. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. [52]

*In the Circuit Court of the United States, Ninth
Circuit, in and for the Northern District of
California.*

No. 14,887.

ERNEST E. EVANS, ——— COLEMAN, and
PERCY W. EVANS, Partners Doing Busi-
ness Under the Firm Name of EVANS,
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORA-
TION, a Corporation, WILLIAM J. DIN-
GEE and IRVING A. BACHMAN,

Defendants.

**Answer of Defendants William J. Dingee and Irving
A. Bachman.**

The defendants William J. Dingee and Irving A. Bachman, for answer to the complaint in the above-entitled action,—

Deny each and every allegation in said complaint contained.

WHEREFORE, said defendants pray to be hence dismissed with their costs herein incurred.

W. M. CANNON,
Attorney for Defendants, William J. Dingee and
Irving A. Bachman,

Receipt of a copy of the within Answer is hereby admitted this 8th day of November, 1909.

OLNEY, PRINGLE & MANNON,
Attorneys for Plaintiffs.

[Endorsed]: Filed November 8, 1909. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. [53]

*In the Circuit Court of the United States, Ninth
Judicial Circuit, Northern District of California.*

EVANS, COLEMAN and EVANS et al.,
Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION et al.,
Defendants.

Stipulation Waiving Jury and Continuing Cause.

It is hereby stipulated and agreed by and between the respective parties hereto that a trial by jury may be, and the same is hereby, waived, and that the trial of said cause may be, and the same is hereby, continued for the term.

WARREN OLNEY,
OLNEY, PRINGLE & MANNON,
Attorneys for Plaintiffs.
MORRISON, COPE & BROBECK,
Attorneys for Defendant.

[Endorsed]: Filed October 6, 1910. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. [54]

At a stated term, to wit, March term, A. D. 1911, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 3d day of April, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 14,887.

ERNEST E. EVANS et al.

vs.

STANDARD PORTLAND CEMENT CORPORATION et al.

No. 15,249.

STANDARD PORTLAND CEMENT CORPORATION et al.

vs.

ERNEST E. EVANS et al.

Order Referring Case to Referee.

Upon motion of Warren Olney, Jr., and in accordance with stipulations filed and the signed order of the Court, it was ordered that the two above-entitled causes be referred to H. M. Wright, Master in Chancery of this Court, as Referee, to take the evidence herein and report the same to the Court, together with his findings of fact and conclusions of law, and that said reference, findings and conclusions

be advisory only and subject to confirmation, modification or rejection upon exceptions by any party.
[55]

**[Report of Standing Master in Chancery as
Referee.]**

*In the Circuit Court of the United States, Ninth
Judicial Circuit, Northern District of California.*

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and
PERCY W. EVANS, Doing Business Under
the Firm Name of EVANS, COLEMAN &
EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORA-
TION, a Corporation, WILLIAM J.
DINGEE and IRVING A. BACHMAN,
Defendants.

No. 15,249.

STANDARD PORTLAND CEMENT CORPORA-
TION, a Corporation,

Complainant,

vs.

ERNEST E. EVANS, GEORGE COLEMAN and
PERCY W. EVANS, Partners Doing Busi-
ness Under the Firm Name of EVANS,
COLEMAN & EVANS,

Respondents.

To the Honorable the Judges of the United States
Circuit Court, Ninth Judicial Circuit, Northern
District of California:

The report of H. M. Wright, Standing Master in
Chancery of this court, respectfully shows as follows:
[56]

The two above-entitled causes, number 14,887 being on the law side of the court and number 15,249 being on the equity side of the court, were referred to the undersigned, Standing Master in Chancery, by an order made and entered on April 3d, 1911, upon a stipulation of the parties directing the Master as a Referee to take and hear the evidence in said causes and report the same to the court, together with his findings of fact and conclusions of law. The title is of no consequence, but in pursuance of the order the Master may be said to have acted as Master in the equity cause and as Referee in the action at law. It was further stipulated that the report should be "advisory of the court only and of the same effect as a reference and report of a Referee in a suit in equity in said court"; that the report should be subject to confirmation "in accordance with Equity Rule 83 and the practice of the court in cases of reference in suits in equity." It was further stipulated that the two causes should be heard together and that the hearing of evidence should be subject to the rules of evidence governing a trial in actions at law tried by a court without a jury. This latter provision of the order was by stipulation of counsel in open court shown at pp. 262-6 of the transcript modified so that the rule with respect to the taking of

testimony should be the same as that in equity causes, implying in cases of an objection being sustained the possibility of the answer being, nevertheless, spread upon the record. The full text of said order of reference may be seen in a certified copy thereof annexed to this report in the appendix thereto, entitled Exhibit "A."

The parties attended upon the Master with their counsel, William I. Brobeck, Esq., and J. J. Dunne, Esq., appearing for the complainant and defendant Standard Portland Cement Corporation, and Warren Olney, Jr., Esq., and James Reid Pringle, Esq., appearing for the plaintiffs and respondents Evans, Coleman and Evans, and [57] the hearing was had on the following dates: May 22d, May 23d, May 24th, May 25th, May 26th, May 27th, May 29th, May 31st and June 1st, all in 1911, and on said last named day the testimony was closed. A date was thereupon set for argument and the cause from time to time continued at the request of counsel, argument being finally made in said matter by Mr. Dunne on September 13th and by Mr. Olney on September 14th, 1911. At the close of the argument on the last named date permission was given Mr. Dunne to file the written notes of his argument together with such reply to the oral argument of Mr. Olney as he might be advised, and the same was accordingly filed on September 22d thereafter. On October 19th, 1911, at the request of the Master, Mr. Olney filed a written brief on points which the Master deemed not fully covered by the oral argument.

The testimony in said cause and the oral argument

thereon was taken in shorthand and transcribed by Charles R. Gagan, a competent and disinterested reporter, and the said testimony in nine (9) volumes and the said oral argument in two (2) volumes, each identified by the signature of the Master on the cover thereof, is herewith separately returned and constitutes a true and correct transcript of the proceedings in said cause. The said subsequent written arguments of Mr. Dunne and Mr. Olney are also severally returned for the information of the court.

During the course of the hearing the depositions of Ernest E. Evans and John L. Howard, theretofore filed in each of said causes, were opened and in part read in evidence. During said hearing also a great number of letters and other documentary material was introduced in evidence as exhibits. In most cases an exhibit number or letter was given to said documentary evidence, and generally the same was copied at large in the record at the request of counsel. Exhibits so copied, or whose contents were sufficiently indicated in the record, were returned to the parties. [58] The following exhibits remain in my hands and are herewith separately returned: Cement Company's Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17 and 18. The said nine (9) volumes of testimony, together with the said exhibits, including such parts of said depositions as appear from said transcript of testimony to have been either incorporated in said transcript at length or by reference, constitutes all the evidence in said two causes.

The complaint in the action at law was filed May 22d, 1909, in behalf of Ernest E. Evans, George Cole-

man and Percy W. Evans as copartners under the firm name of Evans, Coleman & Evans, alien subjects of the King of Great Britain and Ireland residing in British Columbia, Dominion of Canada, against Standard Portland Cement Corporation, a California corporation, with its principal office in the City and County of San Francisco in said State, William J. Dingee and Irving A. Bachman, then residents and citizens of the State of California and Northern District thereof. It counts on promissory note by the defendant to the plaintiffs for Thirty Thousand Dollars (\$30,000), due May 1st, 1909, and in other counts on other notes assigned to the plaintiffs for various sums due at the same time and made by the same corporation, concluding with a prayer for judgment in the sum of Forty Thousand Dollars (\$40,000.00), with interest according to the terms of the notes. The verified answer of the Standard Portland Cement Corporation was filed November 3d, 1909. An unverified answer denying the allegations of the complaint generally was filed on November 8th, 1909, by William M. Cannon, Esq., as attorney for the defendants Dingee and Bachman. The answer of the Cement Corporation set up certain equitable defenses, and their counsel being later advised that equitable defenses must be set up by a separate bill on the equity side of the court (*Burnes vs. Scott*, 117 U. S. 582; *Levi vs. Mathews*, 145 Fed. 152), the corporation filed its bill in equity, being suit number 15,249, on [59] November 14th, 1910, setting forth specifically further and other matters of equitable cognizance as a defense to the notes, and praying an

injunction of the court against the further prosecution of the action at law. To the bill in equity an answer was filed by Evans, Coleman & Evans on March 6th, 1911, denying the equity of the bill in all particulars. On June 29th, 1911, after the trial before the Master was concluded a stipulation was filed signed by counsel for Evans, Coleman & Evans and counsel for Standard Portland Cement Corporation, dated June 13th, 1911, providing that the bill in equity filed by the corporation should be amended in certain particulars therein named and the allegations thereof be deemed denied by the respondents, the purpose of which amendment, speaking generally, was to plead that the notes were ultra vires and contrary to public policy and therefore void.

The foregoing introductory matter has been made in duplicate and appears as the introductory part of the report in each of the two causes above entitled, it being the understanding of the Master that report should be filed in each cause. However, the before-mentioned Exhibit "A," the volumes of testimony, are arguments and briefs, and the exhibits, all of which are returned, will be filed by me in the cause in equity, namely, number 15,249. I also separately file in the last-mentioned cause in equity an opinion originally prepared as a part of the report, but omitted and separately filed for the sake of brevity. In this will be found the full discussion of my reasons for the findings made in the cause at law and the suit in equity above entitled. The solicitors for the respondents have, at my request, prepared findings pursuant to said opinion, which have been made known

to the solicitors for the complainants, and which, after some revision by me, I hereby adopt as my findings of fact and conclusions of law, as follows: [60]

[Findings and Conclusion of Master-Referee.]

*In the Circuit Court of the United States, Ninth
Judicial Circuit, Northern District of California.*

AT LAW—No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN, and
PERCY W. EVANS, Partners, Doing Business Under the Firm Name of EVANS,
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, A Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

The above-entitled cause having come on regularly to be heard before H. M. Wright, Master in Chancery, as referee, to take and hear the evidence therein and report the same to the Court, together with his findings of fact and conclusions of law, in accordance with the stipulation of the parties, plaintiffs appearing by their attorneys, Warren Olney, Jr., and James Reid Pringle, and the defendant, Standard Portland Cement Corporation, appearing by its attorneys William I. Brobeck and J. J. Dunne, and the defendants William J. Dingee and Irving A. Bachman not appearing, after due notice of the hearing given them, and oral and documentary evidence having

been introduced, and the cause submitted for decision, the referee being fully advised in the premises, now makes his findings of fact and conclusions of law as follows: [61]

Said Referee finds:

I.

That the plaintiffs Charles D. Rand, T. R. Stockett, and Thomas Graham, hereinafter mentioned were, at the time of the commencement of this action and at all the times mentioned in the complaint, aliens and residents of British Columbia, and citizens of the Dominion of Canada and of the Kingdom of Great Britain, and subjects of King Edward VII, then king of Great Britain and Ireland; that the plaintiffs are, and were at the time of the commencement of this action, and at all times mentioned in said complaint, partners, doing business under the firm name of Evans, Coleman and Evans.

That the defendant Standard Portland Cement Corporation is, and at all the times herein mentioned was, a corporation organized and existing under the laws of the State of California, with its principal office in the City and County of San Francisco, in said State, and a citizen of the State of California, and a resident of the Northern District thereof.

That the defendants William J. Dingee and Irving A. Bachman were, at the time of the commencement of this action, and at all times hereinafter mentioned, citizens and residents of the State of California and of the Northern District thereof.

II.

That on the fifth day of May, 1908, the defendant

Standard Portland Cement Corporation made, executed and delivered to the plaintiffs its promissory note the words and figures following, to wit: [62]

“San Francisco, May 1, 1908.

For value received, the Standard Portland Cement Corporation promises to pay to the order of Evans, Coleman and Evans, on or before one year from and after May 1, 1908, the sum of thirty thousand (\$30,000) dollars, with interest thereon from said day until paid, at the rate of 6 per cent per annum, payable semi-annually, and if not so paid, to be compounded.

STANDARD PORTLAND CEMENT CORPORATION.

By WILLIAM J. DINGEE,

Vice-Pres'dt.

By L. F. YOUNG,

Secretary.”

[Seal of Standard Portland Cement Corporation.]

That, at the same time, and as a part of the same transaction, the defendants, William J. Dingee and Irving A. Bachman, endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note; that said endorsements and waiver were made before said note was delivered to the plaintiffs; that no part of said promissory note, either principal or interest, has been paid; that the plaintiffs are, and always have been, the owners and holders of said promissory note.

III.

That on the fifth day of May, 1908, the defendant, Standard Portland Cement Corporation, made, ex-

ecuted and delivered to said Charles D. Rand its promissory note in the words and figures following, to wit:

“San Francisco, May 1, 1908.

For value received, the Standard Portland Cement Corporation promises to pay to the order of Charles D. Rand, on or before one year from and after May 1, 1908, the sum of five thousand (\$5,000) dollars, with interest thereon from said date until paid, at the rate of 6 per cent per annum, payable semi-annually, and if not so paid, to be compounded.

STANDARD PORTLAND CEMENT CORPORATION,

By WILLIAM J. DINGEE,

Vice-Pres'dt.

By L. F. YOUNG,

Secretary.”

[Seal of Standard Portland Cement Corporation.]

[63]

That, at the same time, and as a part of the same transaction, the defendants William J. Dingee and Irving A. Bachman endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note; that said endorsements and waiver were made before said note was delivered to said Charles D. Rand; that no part of said promissory note, either principal or interest, has been paid; that said Charles D. Rand, prior to the commencement of this action, assigned and endorsed said promissory note to the plaintiffs, and the plaintiffs have ever since been the owners and holders thereof.

IV.

That on the fifth day of May, 1908, the defendant Standard Portland Cement Corporation made, executed and delivered to said T. R. Stockett its promissory note in the words and figures following, to wit:

“San Francisco, May 1, 1908.

For value received, the Standard Portland Cement Corporation promises to pay to the order of T. R. Stockett, Trustee, on or before one year from and after May 1, 1908, the sum of three thousand (\$3,000) dollars, with interest thereon from said date until paid, at the rate of 6 per cent per annum, payable semi-annually, and if not so paid, to be compounded.

STANDARD PORTLAND CEMENT CORPORATION,

By WILLIAM J. DINGEE,

Vice-Pres'dt.

By L. F. YOUNG,

Secretary.”

[Seal of Standard Portland Cement Corporation.]

That, at the same time, and as a part of the same transaction, the defendants William J. Dingee and Irving A. Bachman endorsed said promissory note and also waived presentment, demand, protest and notice of nonpayment of said note; that said endorsements and waiver were made before said note was delivered to said [64] T. R. Stockett; that no part of said promissory note, either principal or interest, has been paid; that said T. R. Stockett, as Trustee, assigned and endorsed said promissory note to the plaintiffs before the commencement of this action,

and the plaintiffs have ever since been the owners and holders thereof.

V.

That, on the fifth day of May, 1908, the defendant Standard Portland Cement Corporation made, executed and delivered to said Thomas Graham its promissory note in the words and figures following, to wit:

“San Francisco, May 1, 1908.

For value received, the Standard Portland Cement Corporation promises to pay to the order of Thomas Graham, on or before one year from and after May 1, 1908, the sum of one thousand (\$1,000) dollars, with interest thereon from said date until paid, at the rate of 6 per cent per annum, payable semi-annually, and if not so paid, to be compounded.

STANDARD PORTLAND CEMENT CORPORATION,

By WILLIAM J. DINGEE,
Vice-Pres'dt.
By L. F. YOUNG,
Secretary.”

[Seal of Standard Portland Cement Corporation.]

That, at the same time and as a part of the same transaction, the defendants William J. Dingee and Irving A. Bachman endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note; that said endorsements and waiver were made before said note was delivered to said Thomas Graham; that no part of said promissory note, either principal or interest, has been paid; that said Thomas Graham, before the commencement of this action, assigned and endorsed

said promissory note to the plaintiffs, and the plaintiffs have ever since been the owners and holders thereof. [65]

VI.

That each of the above-mentioned promissory notes was executed and delivered for a valuable consideration paid and delivered by the respective payees of said notes to said Standard Portland Cement Corporation on May 5th, 1908, that is to say on said date the plaintiffs herein delivered to said defendant Standard Portland Cement Corporation thirty bonds and three hundred shares of the stock of the Northwestern Portland Cement Company, a corporation, and thereupon and at the same time, and in consideration therefor, there was delivered to the plaintiffs the promissory note of said defendant in favor of the plaintiffs hereinbefore set forth; that at the same time said Charles D. Rand delivered to said Standard Portland Cement Corporation five bonds and fifty shares of the stock of said Northwestern Portland Cement Company, and thereupon and at the same time, and in consideration therefor, said defendant delivered to said Charles D. Rand its promissory note in his favor hereinbefore set forth; that at the same time said T. R. Stockett delivered to said Standard Portland Cement Corporation three bonds and thirty shares of the stock of said Northwestern Portland Cement Company, and thereupon and at the same time, and in consideration therefor, said defendant delivered to him the said promissory note in his favor as trustee hereinbefore set forth; that at the same time said Thomas Graham delivered to said Standard Portland Cement Corporation one

bond and ten shares of the stock of said Northwestern Portland Cement Company, and thereupon and at the same time, and in consideration therefor, said defendant delivered to said Thomas Graham its promissory note in his favor hereinbefore specified;

VII.

I intentionally omit to find on other issues presented by the answer herein, for the reason that they present defenses of [66] fraud and other matters of purely equitable cognizance which were not properly pleadable in an answer at law, and which this court has not the power to consider on its law side. The same issues have, however, been presented by the bill in equity filed in said court entitled *Standard Portland Cement Corporation vs. Ernest E. Evans, George Coleman and Percy W. Evans*, partners doing business under the firm name of Evans, Coleman & Evans, number 15,249, on the equity side of said court, a case tried at the same time with this action, and the said issues have been by my findings in said cause determined adversely to the complainants therein, being the defendants herein.

From the foregoing facts the Referee finds, as his conclusions of law, that the plaintiffs are entitled to the judgment against the defendants, and each and all of them, for the sum of Thirty-nine Thousand Dollars (\$39,000.00), together with interest at the rate of six per cent (6%) per annum, from the first day of May, 1908, compounded semi-annually, and for costs.

Dated this 22d day of December, 1911.

H. M. WRIGHT,
Master in Chancery (As Referee).

Supplementary Report [of Master-Referee].

The proceedings taken on settlement of the Master's report have to some extent been indicated at page 51½ of the foregoing report.

On November 1, 1911, the attorneys for the respective parties were advised that my report was in draft in the shape of an opinion and counsel for Evans, Coleman & Evans were invited to [67] prepare special findings and opposing counsel to file objections to suggested findings. Copy of the letter of notification is annexed hereto. Suggested findings and objections thereto were accordingly filed. The objections to the findings were in substance the same as findings 4, 5 and 6, in the objections to the report, herewith separately filed, and said objections to the suggested findings do not seem to me material to be filed herewith. The said suggested findings offered by counsel for Evans, Coleman & Evans, after revision, were adopted by me as my draft report herein, and on December 2d, 1911, counsel for the respective parties were notified of my action thereon by mail, and were given until December 18, 1911, within which to prepare, serve and file with me their objections to the report as finally drafted. Copy of said letter is hereunto annexed. The time thus limited was extended to December 20, 1911, and on said last-mentioned day counsel for the Standard Portland Cement Corporation served and filed with me objections to the said report, which objections, by reason of their bulk, are not hereunto annexed, but are herewith separately returned at the same time with his

report. Having duly considered each of the said objections I have this day overruled said objections, and have settled and signed the foregoing as my final report herein.

Respectfully submitted with my final report this 22d day of December, 1911.

H. M. WRIGHT,
Master in Chancery, as Referee. [68]

[Notice of Preparation of Draft Report of Master-Referee.]

United States Circuit Court, Ninth District, Northern District of California.

Office of the
Master in Chancery,
214-215 United States Courthouse and
Post Office Building.

San Francisco, Cal., November 1st, 1911.

To Morrison, Dunne & Brobeck and to J. J. Dunne, Esq., Solicitors for Standard Portland Cement Corporation, and to Warren Olney, Jr., Esq., and James Reid Pringle, Esq., Solicitors for Evans, Coleman & Evans:

Please be advised that the report of the undersigned as Master and Referee in cases numbers 14,887 and 15,249, in the above-entitled court is in draft and may be inspected in the Master's Office. Copies if desired can be arranged for with the Master's reporter, Mr. Eckhoff. The report is in favor of the respondents in the equity action and plaintiffs in the law action.

The draft, after reciting the history of the proceedings before me, is in the shape of an opinion. Rule 52 of the rules of this court requires in my opinion that the report shall consist of specific findings. The report is therefore incomplete and, following the usual practice, the assistance of prevailing counsel will now be asked. Counsel for Evans, Coleman & Evans will, therefore, prepare, serve and file findings of fact and conclusions of law in each cause, in consonance with the opinions expressed in the draft. In addition thereto suggestions may be made of obvious errors or other necessary corrections or modifications, including matters omitted which should be stated, consistent with the views expressed. These findings and suggested modifications should be served upon opposing counsel and filed with me on or before November 9th, 1911, and opposing counsel may have until November 15th, 1911, to serve and file their objections to such suggestions. These objections should not be inconsistent with the opinions expressed by me. The report will then be settled as a draft and the counsel for the losing party will be given time thereafter in which to file their objections to the report.

Yours truly,

H. M. WRIGHT,
Master-Referee. [69]

**[Notice of Settlement of Report of Master-
Referee.]**

*United States Circuit Court, Ninth District, North-
ern District of California.*

Office of the Master in Chancery, 214-215 United
States Courthouse and Post Office Building.

San Francisco, Cal., December 2, 1911.

To Warren Olney, Jr., Esq., and James Reid Pringle,
Esq., Solicitors for Plaintiffs and Respondents
Evans, Coleman & Evans, and to W. I. Brobeck,
Esq., and J. J. Dunne, Esq., Solicitors for
Standard Portland Cement Corporation, Com-
plainant and Defendant:

In the matter of settlement of proposed reports in
Evans et al. vs. Standard Portland Cement Corpora-
tion and the contra cause, numbers 14,887 and 15,249,
I have considered the proposed findings in each cause
submitted by counsel for Evans, Coleman & Evans,
and the proposed amendments thereto submitted by
opposing counsel, and have this day settled the said
reports as my considered draft reports herein as fol-
lows:

The following amendments in each case by attor-
neys for Standard Portland Cement Corporation
have been overruled:

The draft report heretofore prepared by me will
be, in the first place, modified so that a report will be
filed both in the law cause and in the cause in equity.
In each report the first five pages of the draft already
prepared by me, containing introductory matter, will

open the report. Then insert a new page, copy of which is herewith enclosed for your guidance, to be numbered 5½. The opinion beginning with page 6 to the end of the draft report hitherto prepared will be omitted and will be filed separately in the cause in equity as an opinion explanatory of the report. Then insert the proposed findings hitherto presented by counsel for Evans, Coleman & Evans, which I have adopted except as follows:

1st. Omit paragraph XV, at pages 24 and following, and insert in place thereof as Paragraph XV the amendments thereof prepared by Olney, and, according to my information, mailed to opposing counsel. The same can be seen if desired at my office.

2d. In finding XVII, at page 27, third line, insert after the word "aware" the words "until November, 1908."

3d. In finding XX, page 29, fifth line from bottom, change the word "under" to "in," and on page 30, same finding, line 10, after the word "thereupon" insert the words "in March, 1908" and on page 31, same finding, second line from bottom, after the word "complainant" insert the words "save as hereinafter set forth."

4th. At page 38 before the conclusions of law insert a new finding, to be numbered Finding XXX, copy of which is herewith enclosed. [70]

To W. O. Jr. & J. R. P.

W. I. B. & J. J. D.

In the report in the action at law, number 14,887, after page 5½ of my draft before-mentioned, the opinion will be omitted and returned separately as

stated, to be filed in the equity cause, and will then continue with the findings proposed by Mr. Olney, which have been adopted except as follows:

I have rejected proposed findings number VI to and including XXX, and have inserted in place thereof new findings to be numbered VI and VII, after finding V, and before the suggested conclusions of law, a copy of which is enclosed with this letter.

Against the possibility that I may not have made myself entirely clear as regards the present form of the draft reports, the parties are at liberty to inspect the same in my office at any time.

The parties may have until and including December 18th, 1911, within which to prepare, serve and file with me their objections to the reports in each of the above-entitled matters, which should be so framed as to serve as the foundation for exceptions to be filed to the report in the court above after the same report is finally settled, signed and filed.

Yours truly,

H. M. WRIGHT,
Master-Referee.

[Endorsed]: Filed Dec. 22, 1911. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. [71]

*In the Circuit Court of the United States, Ninth
Judicial Circuit, Northern District of California.*

AT LAW—No. 14,887.

ERNEST B. EVANS, GEORGE COLEMAN, and
PERCY W. EVANS, Partners, Doing Busi-
ness Under the Firm Name of EVANS,
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORA-
TION, a Corporation, WILLIAM J. DIN-
GEE and IRVING A. BACHMAN,

Defendants.

Objections to Referee's Report and Findings.

Objections taken by Standard Portland Cement Corporation, a corporation, defendant herein, to the Report and Findings made in the above-entitled cause by Hon. H. M. Wright, Referee.

FIRST.—For that at and during the hearing upon which said report and findings were made, and in the taking of the testimony upon which said report and findings were and are based, the said Referee hath committed errors in law, prejudicial to said defendant, and at said hearing duly excepted to by said defendant; and in this behalf, this defendant specifies said errors as follows, to wit:

1. Said Referee erred in overruling the objection of the said defendant to the following question asked the witness Ernest E. Evans on cross-examination in his deposition now on file in the above-entitled action,—

“Mr. Evans at the time of the sale of the bonds and stocks of the Northwestern Portland Cement Co. to the Standard Portland Cement Corporation, had you considered in your own mind the value of the assets [72] of the Northwestern Portland Cement Company?”

Said objection was made upon the ground that said question and the evidence sought to be elicited thereby were incompetent, immaterial and irrelevant, and not pertinent to any issue in the case and assuming a fact as to which there was no evidence, to wit, that there was any sale to the Standard Portland Cement Corporation, and calling for the secret, uncommunicated mental processes of the witness; said objection was overruled by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

2. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, all of the testimony given by the witness Ernest E. Evans in his deposition now on file in the above-entitled action, relative to the values, and particularly to the value of any estate or assets of the Northwestern Portland Cement Company; said motion was made upon the ground that said testimony of said witness was incompetent, immaterial and irrelevant, without foundation,—

It not appearing that the witness knew either the intrinsic value of the alleged assets or the market value thereof, and upon the ground that the answer as given was not responsive to the question asked.

Said motion was denied by said Referee, to which ruling said defendant then and there
Overruled. duly excepted and now assigns the same as error.

3. Said Referee erred in overruling the objection of said defendant to the following question asked the witness Ernest E. Evans on cross-examination in his deposition now on file in the [73] above-entitled action,—

“What figure, if any, did you put upon those assets?”

Said objection was made upon the ground that said question and the evidence sought to be elicited thereby were incompetent, immaterial and irrelevant, and not pertinent to any issue in the case and assuming a fact as to which there was no evidence, to wit, that there was any sale to the Standard Portland Cement Corporation, and calling for the secret, uncommunicated mental processes of the witness, and upon the further ground that his mental condition, or mental processes, beliefs, or private opinions, uncommunicated, are immaterial to any issue in this case, and do not constitute any fact or facts by which said defendant could or should be bound; said objection was overruled by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

4. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, the following answer given by the witness Ernest H. Evans on his cross-examination in his deposition now on file in the above-entitled action,—

“Well, I considered that they were worth between \$240,000 and \$250,000, that is, if the company were liquidated.”

Said motion was made upon all the grounds stated in the objection mentioned in the last preceding paragraph herein, and upon the further
Overruled. ground that said answer was purely speculative: said motion was denied by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

5. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, the following answer given by the witness Ernest E. Evans on cross-examination in his deposition [74] now on file in the above-entitled action, in response to the question,—

“By ‘liquidated’ you mean?” namely, “That is to say, if the company went into liquidation, and the assets was sold, they would realize between \$240,000 and \$250,000, but as a going concern I considered that it was worth par easily, because the money which was actually spent in construction would have to be spent anyhow.”

Said motion was made upon all the grounds enumerated in paragraph 3 hereof, and upon the further ground that said answer is not responsive to the question asked, and upon the further ground that the witness was merely speculating as to
Overruled. possibilities, and not stating a fact, but making an argument; said motion was denied by said Referee, to which ruling said defend-

ant duly excepted and now assigns the same as error.

6. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, the following passage from the testimony given by the witness Ernest E. Evans on cross-examination in his deposition now on file in the above-entitled action,—

“Q. Considering the concern as a going concern, or as a concern the owners of which contemplated going ahead with it, would you have put a different figure upon the assets? A. Certainly, the going ahead with it; I would consider it fully worth par.”

Said motion was made upon all the grounds heretofore stated in paragraph 3 hereof and in the last preceding paragraph hereof; said motion

Overruled. was denied by said Referee, to which ruling said defendant duly excepted and now assigns the same as error.

7. Said Referee erred in receiving, and in denying the [75] motion of said defendant to strike out, the following passage from the testimony given by the witness Ernest E. Evans on cross-examination in his deposition now on file in the above-entitled action,—

“Q. At the time referred to of the sale of your stocks and bonds to the Standard Portland Cement Corporation, did you have any information as to the plans of Mr. Dingee or Mr. Bachman for going ahead, or not going ahead with the Northwestern Cement Company? A. Yes; I distinctly understood all along that they were going ahead with this, only they had stopped it

owing to the financial panic until things settled down again, and at the time that I met Dr. Bachman when he went to examine the property, of course we spent the evening together, and he distinctly stated this Northwestern Portland Cement Company was to be eventually amalgamated with the Santa Cruz and the Standard Portland Cement Corporation."

Said motion was made upon the ground heretofore enumerated in the previous paragraph herein, and upon the further grounds that the above-mentioned answer was incompetent, immaterial and irrelevant, not responsive, involving hearsay, *ex parte* declarations of persons by whose statements the above-named defendant could not be bound or should not be bound, and not properly cross-examination. Said motion was denied by said Referee, to which ruling said defendant then and there duly excepted, and now assigns the same as error.

8. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, the following passage from the testimony given by the witness Ernest E. Evans on cross-examination in his deposition now on file in the above-entitled action,—

"What interest, if any, did you understand the Standard Portland Cement Company had in the Northwestern Cement Company? A. Well, the idea of starting the Northwestern Company was strategic, and with the idea of protecting the [76] other factories."

Said motion was made upon all the grounds heretofore stated in the last preceding paragraph hereof; said motion was denied by said Referee, to which ruling said defendant then and there duly excepted, and now assigns the same as error.

9. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, a portion of the following passage from the testimony given by the witness John L. Howard on cross-examination upon the hearing in the above-entitled action,—

“Q. At the time of the purchase of the bonds of the Northwestern Portland Cement Company by the Standard Portland Cement Corporation was anything said by Mr. Dingee as to the Standard Portland Cement Corporation relative to the Northwestern? A. I don't recall that he said anything at that time, but both he and Bachman had frequently spoken of it before.”

Said motion was made upon the ground that the latter half of the foregoing answer was **Overruled.** not responsive to the question asked; said motion was denied by said Referee, to which ruling said defendant then and there excepted, and now assigns the same as error.

10. Said Referee erred in overruling the objection of said defendant to the following question asked the witness John L. Howard on cross-examination upon the hearing of the above-entitled action,—

“Q. I call your attention to defendants’ ‘Exhibit 2,’ and to the letter therein by the Standard Portland Cement Corporation to the Western Fuel Company, dated March 8, 1906, and to the assignment therein dated June 30, 1906, by the Western Fuel Company to the Western Building Material Company of the sales contract between the Western Fuel Company and the Standard Portland Cement Company, and to the consent therein of such [77] assignment by the Standard Portland Cement Company, and ask you what is the explanation of the provision in the letter and assignment to the effect that the sales contract may at any time be terminated at the option of the Standard Portland Cement Company in case you yourself should cease at any time to be the general executive officer of the Western Fuel Company or the Western Building Material Company?”

Said objection was made upon the ground that said question and the testimony sought to be elicited thereby were immaterial, irrelevant and incompetent, not proper cross-examination, without foundation in this, that it does not appear that the witness knows, and an attempt to vary the terms of a written instrument of parole evidence; said objection was overruled by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

11. Said Referee erred in sustaining the objection of the above-named plaintiffs to the following

question asked the witness John L. Howard upon the hearing of the above-entitled matter,—

“Q. Now, it appeared then at that time that you were in doubt whether you learned of that at the time of the Wenzelberger report or whether you learned of it later?”

Said objection was made upon the ground that said question assumes something that is

Overruled. not in the case; said objection was sustained by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

12. Said Referee erred in overruling the objection of said defendant to the following question asked the witness Foster Young upon the hearing in the above-entitled action,—

“Q. But you understood, anyhow, did you not that he came [78] there in accordance with the letter of May 4, 1908?”

Said objection was made upon the ground that said question and the testimony sought to be elicited thereby were incompetent and not proper cross-examination, and upon the further ground that the understanding of the witness is not evi-

Overruled. dence; said objection was overruled by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

13. Said Referee erred in granting the motion of the above-named plaintiffs to strike out from the

Overruled. record in the above-entitled action the minute-book of the Northwestern Port-

land Cement Company, to which ruling said defendant then and there duly excepted and now assigns the same as error.

14. Said Referee erred in sustaining the objections of the above-named plaintiffs to the introduction in evidence upon the hearing of the above-entitled action of the book containing the bond account and record of subscriptions and sales of bonds of the Northwestern Portland Cement Company; said objection was made upon the ground that said book was incompetent, immaterial, hearsay, and not the best evidence; said objection was **Overruled.** sustained by said Referee, to which ruling said defendant then and there duly excepted, and now assigns the same as error.

15. Said Referee erred in sustaining the objection of the above-named plaintiffs to the receiving in evidence upon the hearing of the above-entitled action of the memorandum slip in the handwriting of William J. Dingee showing subscription for bonds of the Northwestern Portland Cement Company; said objection was made upon the ground that said memorandum slip was incompetent, hearsay and not binding upon any of the parties to this action, and not within [79] the knowledge of the witness; said objection was sustained by said Referee, **Overruled.** to which ruling said defendant then and there duly excepted and now assigns the same as error.

16. Said Referee erred in sustaining the objection of the above-named plaintiffs to the following question asked the witness Foster Young during the

hearing of the above-entitled action,—

“Q. Has there ever been any question in your mind as to whether you held those bonds to the order of the Standard Portland Cement Corporation?”

Said objection was made upon the ground that said question was incompetent and immaterial and calling for the opinion and view of the witness; said objection was sustained by said Referee,
Overruled. to which ruling said defendant then and there duly excepted and now assigns the same as error.

17. Said Referee erred in sustaining the objection of the above-named plaintiffs to the following question asked the witness Foster Young during the hearing of the above-entitled action,—

“Q. Have you ever regarded the Standard Portland Cement Corporation as in any manner the owner of those bonds?”

Said objection was made upon the ground that said question was incompetent and immaterial and calling for the opinion and view of the witness; said objection was sustained by said Referee,
Overruled. to which ruling said defendant then and there duly excepted and now assigns the same as error.

18. Said Referee erred in overruling the objection of said defendant to the following question asked the witness John L. Howard upon the hearing of the above-entitled action,—

“Mr. Howard, will you state to the Court what evidences of lime deposits there were on

this ground in Washington which was finally acquired by the Northwestern Portland Cement Company?" [80]

Said objection was made upon the ground that said question and the testimony sought to be elicited thereby were immaterial, irrelevant and incompetent, and without foundation in this that it was not shown that the witness is competent, and upon the further ground that it was not a proper subject matter in any event for statement by the witness—he not having been shown to have been experienced in the line to which the inquiry was addressed, and upon the further ground that the witness was a general merchant and neither a geologist nor an expert upon these matters, and upon the further ground that it already appeared that the witness had not

been actually on the spot; said objection was overruled by said Referee, to which ruling said defendant then and there duly excepted, and now assigns the same as error.

19. Said Referee erred in overruling the objection of said defendant to the following question asked the witness John L. Howard during the hearing of the above-entitled action,—

“Q. What was its extent?”

Said objection was made upon the ground that no foundation had been laid, in this, that it did not appear that the witness knew; said objection was overruled by said Referee, to which ruling the said defendant then and there duly excepted, and now assigns the same as error; and in this behalf this

defendant further assigns as error the ruling of said Referee admitting general state-
Overruled. ments by said witness John L. Howard as to the extent and size of the above-mentioned lime deposits.

20. Said Referee erred in overruling the objection of said defendant to the following question asked the witness John L. Howard during the hearing of the above-entitled action,—

“Q. Did this acceptance or any other acceptance by the Western Fuel Company in favor of either the Standard Portland Cement Corporation or the Santa Cruz Portland [81] Cement Company have anything to do or play any part in connection with the sale of the bonds of the Northwestern Portland Cement Company involved in this transaction?”

Said objection was made upon the ground that said question and the testimony sought to be elicited thereby were immaterial, irrelevant and incompetent, and calling for the opinion and private judgment of the witness, and upon the further ground that the witness had already testified that he had no recollection as to anything else affecting these acceptances except what appeared on the paper itself;
said objection was overruled by said
Overruled. Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

21. Said Referee erred in overruling the objection of said defendant to the following question asked the witness John L. Howard during the hear-

ing of the above-entitled action,—

“Q. What knowledge or information did you have as to any intention on the part of Mr. Dingee that the bonds and stocks of the Northwestern Portland Cement Company purchased by the Standard Portland Cement Corporation were not to be held by the latter Company, but were to be turned over to the Northwestern Company?”

Said objection was made upon the ground that the question asked and the testimony sought to be elicited thereby were incompetent, being an effort to establish the intention of one person by the statement of another person; said objection

Overruled. was overruled by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

22. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, the following passage from the testimony given by the witness John L. Howard during the hearing [82] of the above-entitled action,—

“Q. What knowledge or information did you have as to the actual disposition of the bonds and stock of the Northwestern that was sold to the Standard Portland Cement Corporation?

A. The only knowledge I had was the fact of their delivery by Mr. Norcross to Mr. Young. Beyond that I knew nothing.”

Said motion to strike out was made upon the ground that the question asked and answer calls for and states the conclusion of the witness, on the fur-

ther ground that it does not appear that the witness had any real or personal knowledge upon the subject, and upon the further ground that he testified from hearsay only; said motion was denied by **Overruled.** said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

23. Said Referee erred in overruling the objection of said defendant to the following question asked the witness Sidney V. Smith upon his direct examination during the hearing of the above-entitled action,—

“Q. What took place at that interview as you remember it?”

Said objection was made upon the ground that said question and the testimony sought to be elicited thereby were immaterial, irrelevant and incompetent, and calling for hearsay, and upon the further ground that it did not appear that the party or parties sought to be charged with what took place at said interview, or any representative of them was present thereat, and upon the further ground that as against the Northwestern Portland Cement Company, and particularly as against the Standard Portland Cement Corporation the proffered evidence was *res inter alios acta*, and self-serving; said objection was overruled by said Referee, to which **Overruled.** said [83] defendant then and there duly excepted and now assigns the same as error.

24. Said Referee erred in overruling the objection of said defendant to the following question

asked the witness Ernest E. Evans during the hearing of the above-entitled action,—

“Q. Mr. Evans, state whether or not at the first interview which you and Mr. Spencer and Mr. Smith had with Mr. Howard in March, 1908, any proposal or suggestion was made to you and the other gentlemen with you, by Mr. Howard, as to any plan for relieving you of your investments in the Northwestern Portland Cement Company?”

Said objection was made upon the ground that said question was leading and suggestive; said objection was overruled by said Referee,
Overruled. to which ruling said defendant then and there duly excepted and now assigns the same as error.

SECOND.—For that the said Referee in his said report and findings, in the finding numbered “VI” hath found that each of the promissory notes in said report and findings mentioned was executed and delivered for a valuable consideration paid and delivered by the respective payees of said notes to this defendant on May 5, 1908, that is to say, on said date the above-named plaintiffs delivered to this defendant thirty (30) bonds and three hundred (300) shares of the Northwestern Portland Cement Company, and in consideration therefor, there was delivered to the plaintiffs the promissory note of said defendant set forth in said report and findings, and that at the same time Charles D. Rand delivered to this defendant five (5) bonds and fifty (50) shares of the stock of said Northwestern Portland Cement

Company, and thereupon and at the same time, and in consideration therefor, this defendant delivered to said Rand its promissory note in his favor in said findings referred [84] to, and at the same time T. R. Stockett delivered to this defendant three (3) bonds and thirty (30) shares of the stock of said Northwestern Portland Cement Company, and thereupon and at the same time, and in consideration therefor, this defendant delivered to said Stockett the promissory note in his favor in said findings referred to, and that at the same time Thomas Graham delivered to this defendant one (1) bond and ten (10) shares of the stock of said Northwestern Portland Cement Company, and thereupon and at the same time, and in consideration therefor, this defendant delivered to said Graham its promissory note in his favor referred to in said report and findings; said finding is not warranted, justified or sustained by the evidence, but is contrary to the evidence and to the weight and effect of the evidence; and said Referee hath failed to find, but should have found, that none of said bonds or shares of said stock of said Northwestern Portland Cement Company in said finding numbered "VI" referred to, were ever delivered to this defendant, or came into its possession, or under its control or passed into its treasury, but, on the contrary, said bonds and stock were delivered to and received by and passed into the treasury of said Northwestern Portland Cement Company; and said Referee hath failed to find, but should have found, that none of the above-mentioned promissory notes was executed and delivered or executed

or delivered, for a valuable or any consideration whatever paid and delivered, or paid or
Overruled. delivered, by the respective or any payees, or payee, of said notes, or of any of them, to this defendant on May 5, 1908, or at any other time, or at all.

THIRD.—For that the said Referee in his said report and findings, in the finding numbered “VII” hath omitted to find upon other issues presented by the answer of this defendant in the above-entitled action, and hath found that the same issues were presented [85] in the equity cause, number 15,249, tried at the same time with the above-entitled action, and that said issues were in said equity cause determined adversely to this defendant, who was complainant therein; and in this behalf, this defendant objects to said report and findings upon the ground that the other issues referred to in said finding numbered “VII” should have been determined in the above-entitled action whether involved in said equity suit, number 15,249, or not, and further objects that the adverse determination of said other issues in said equity suit number 15,249 was not warranted, justified or sustained by the evidence in that equity suit, but was contrary to the evidence and to the weight and effect of the evidence therein; and that said Referee should have found said issues in said equity action number 15,249 favorably to this defendant, who was complainant therein; and in this behalf, this de-
Overruled. fendant makes express reference to its objections to the Master’s report and findings in the said equity suit num-

bered 15,249 in support of this present objection.

FOURTH.—For that the said Referee, in his said report and findings, hath failed to find, **Overruled.** that the financial crisis for the year 1907 began in the spring or summer of that year.

FIFTH.—For that the said Referee, in his said report and findings, hath failed to find, **Overruled.** that during the years 1907 and 1908 William J. Dingee was without funds wherewith to carry on any enterprises in which he was then interested, and was insolvent.

SIXTH.—For that the said Referee, in his said report and findings, hath failed to find, that Ernest E. Evans and his assignors, and said plaintiffs received the par value of the bonds found to have been purchased by this defendant, together with accrued interest thereon, up to the date of the promissory notes in said findings referred to. [86]

SEVENTH.—For that the said Referee, in and by his said report and findings hath found, that this defendant has no valid defense against or in the above-entitled action, and is not entitled to any relief against the above-named plaintiffs, and that the above-named plaintiffs are entitled to judgment against this defendant in the manner and form stated in said Referee's conclusions of law in the above-entitled action; said finding is not warranted, justified or sustained by the evidence, but is contrary to the evidence and to the weight and effect of the evidence; and said Referee hath failed to find, but

should have found, that this defendant has a valid defense in and to the above-entitled action at law, and is entitled to the relief prayed for in its answer therein, and that the above-named plaintiffs should take nothing by their action

Overruled. herein, and that this defendant should have judgment herein for its costs.

EIGHTH.—And this defendant further objects to said findings, and to each of them, upon the ground that said Referee hath erred in not granting the relief prayed for by this defendant, and in giving, making and rendering his report and findings in favor of the above-named plaintiffs and against the above-named defendant; and erred in not giving, making and rendering his report and findings in the above-entitled cause in favor of the above-named defendant and against the above-named plaintiffs; and erred in giving, making and rendering his report and findings in the above-entitled cause in favor of said plaintiffs and against said defendant upon the pleadings, evidence and record in the above-entitled action: and erred in giving, making and rendering his report and findings in the above-entitled cause in favor of said plaintiffs and against said defendant in this, that said report and findings and each and all of them, were and was and are and is contrary to law, and not warranted, justified or sustained by the evidence, but [87] is contrary to the evidence

Overruled. and to the weight and effect of the evidence and to the case made and stated in the pleadings, evidence and record in the above-entitled cause.

In all of which particulars this defendant submits that the draft of said report and findings ought to be varied, altered, amended and corrected.

MORRISON & BROBECK,

MORRISON, DUNNE & BROBECK,

J. J. DUNNE,

Attorneys for Standard Portland Cement Corporation,
Defendant Above Named.

The above objections having been considered, ordered that they and each of them are overruled this 22d day of December, 1911.

H. M. WRIGHT,

Master in Chancery, Sitting as Referee.

Service by receipt of copy of within Original Objections to Referee's report and findings is hereby admitted this 20th day of December, A. D. 1911.

PAGE, McCUTCHEN, KNIGHT &
OLNEY,

Attorneys for Plaintiffs.

[Endorsed]: Filed Dec. 20, 1911. H. M. Wright,
Master in Chancery.

Filed Dec. 22, 1911. Southard Hoffman, Clerk.
By W. B. Maling, Deputy Clerk. [88]

District Court of the United States, Northern District of California, Second Division.

(Formerly In the Circuit Court of the United States,
Ninth Judicial Circuit, Northern District of
California.)

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN, and
PERCY W. EVANS, Partners, Doing Business Under the Firm Name of EVANS.
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

Stipulation [That Objections to Draft Report of Master-Referee shall Stand as Exceptions Before Court].

In the above-entitled case, it is hereby stipulated by and between the parties hereto that the objections heretofore filed before the Master-Referee to the

draft report shall stand as and in lieu of the exceptions filed before the court.

Dated January 5th, 1912.

OLNEY, PRINGLE & MANNON,
PAGE, McCUTCHEN, KNIGHT &
OLNEY,

Attorneys for Plaintiffs.

MORRISON & BROBECK,
J. J. DUNNE,

Attorneys for Defendant, Standard Portland
Cement Corporation.

[Endorsed]: Filed Jan. 5, 1912. Jas. P. Brown,
Clerk. By J. A. Schaertzer, Deputy Clerk. [89]

*District Court of the United States, Northern Dis-
trict of California, Second Division.*

(Formerly In the Circuit Court of the United States,
Ninth Judicial Circuit, Northern District of
California.)

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and
PERCY W. EVANS, Partners, Doing Busi-
ness Under the Firm Name of EVANS,
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORA-
TION, a Corporation, WILLIAM J. DIN-
GEE and IRVING A. BACHMAN,

Defendants.

**Order [That Objections Before Master-Referee
Stand as Exceptions Before Court].**

On stipulation of counsel this day filed:

IT IS HEREBY ORDERED that the objections filed in the above-entitled cause before the Master-Referee, stand as and in lieu of exceptions filed before the Court.

Dated January 5th, 1912.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Jan. 5, 1912. Jas. P. Brown,
Clerk. By J. A. Schaertzer, Deputy Clerk. [90]

At a stated term, to wit, the March term, A. D. 1912, of the District Court of the United States, of America, in and for the Northern District of California, Second Division, held at the Courtroom in the City and County of San Francisco, on Wednesday, the 24th day of April, in the year of our Lord one thousand nine hundred and twelve. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 14,887.

ERNEST E. EVANS et al.

vs.

STANDARD PORTLAND CEMENT CORPORATION et al.

Order Overruling Objections to Referee's Report and Findings; [Confirming Said Report and Findings, and Directing Entry of Judgment Accordingly].

Defendant's objections to the Referee's report and findings came on this day to be heard, and after arguments by the attorneys were submitted, and after full consideration it was ordered that the said objections be and the same are hereby overruled; that the Referee's report and findings be confirmed, and that judgment be entered accordingly, to which ruling defendants then and there duly excepted. [91]

In the District Court of the United States in and for the Northern District of California, Second Division.

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,
COLEMAN AND EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

Judgment.

The above-entitled action having by stipulation of parties been referred to H. M. WRIGHT, Master

in Chancery of the above-entitled court, as Referee, to take and hear the evidence therein and report the same to the Court, together with his Findings of Fact and Conclusions of Law, by an Order of Reference reading as follows: [92]

"In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

No. 14,867.

ERNEST E. EVANS, GEORGE COLEMAN and
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,
COLEMAN & EVANS.

Plaintiffs.

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN.

Defendants.

No. 15,249.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation,

Plaintiff,

vs.

ERNEST E. EVANS, GEORGE COLEMAN and
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,
COLEMAN & EVANS.

Defendants.

ORDER OF COURT.

In accordance with the stipulation of all the parties to the two above-entitled causes:

IT IS HEREBY ORDERED that both said causes be and the same are hereby referred to H. M. WRIGHT, Master in Chancery of this court, as Referee, to take and hear the evidence therein and report the same to the Court, together with his Findings of Fact [93] and Conclusions of Law.

IT IS FURTHER ORDERED, in accordance with said stipulation, that said reference and the Findings of Fact and Conclusions of Law of said Referee are, in each of said causes, to be advisory of the Court only and of the same effect as a reference and a report of the Referee in a suit in equity in said court, and upon said Referee returning his report to the Court the same shall, in each of said causes, be subject to confirmation or to modification or rejection by the Court upon exceptions by any party, in accordance with Equity Rule 83 and the practice of the Court in cases of reference in suits in equity.

IT IS FURTHER ORDERED, in accordance with said stipulation, that the evidence in both of said causes be taken and heard by said Referee at one and the same time and that all of the evidence taken and heard be considered as taken and heard in each of said causes, so far as such evidence may be applicable to the issues therein; that the trial of said causes before said Referee and the taking and hearing of evidence therein be in the manner and subject to the rules and practice governing the trial in the above-entitled court of actions at law tried by the Court

without a jury, and that the Referee report the evidence taken and heard by him and his Findings of Fact and Conclusions of Law in each of said causes to the Court at one and the same time.

(Signed) W. C. VAN FLEET,
Judge of the Circuit Court of the United States,
Ninth Circuit, in and for the Northern District
of California.

Dated April 3, 1911." [94]

—and said action having come on regularly for hearing before said Referee and oral and documentary evidence having been introduced on behalf of the plaintiffs and on behalf of the defendants, and the matter having been submitted to said Referee for decision and report, and said Referee having made and returned to the Court his report, together with his Findings of Fact and Conclusions of Law, wherein said Referee reports that the plaintiffs are entitled to judgment against each and all of the defendants for the sum of Thirty-nine Thousand Dollars (\$39,000), together with interest from the 1st day of May, 1908, at the rate of six (6) per cent per annum, compounded semi-annually, and for costs, and exceptions having been filed by the defendant Standard Portland Cement Corporation to said report, together with said Findings of Fact and Conclusions of Law, and the same having come on duly to be heard by the Court, J. J. Dunne appearing for said defendant and Warren Olney, Jr., appearing for the plaintiffs, and said exceptions having been argued and submitted to the Court for ruling, and the Court being fully advised, having made its order overruling said

exceptions, and confirming said report, together with said Findings of Fact and Conclusions of Law, and directing judgment for the plaintiffs and against the defendants in accordance with said report.

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid,

IT IS ADJUDGED by the Court that Ernest E. Evans, George Coleman and Percy W. Evans, plaintiffs, do have and recover of and from Standard Portland Cement Corporation, a corporation, William J. Dingee and Irving A. Bachman, defendants, the sum of Forty-nine [95] Thousand Four Hundred and Four and 3/100 Dollars (\$49,404.03), together with costs of plaintiffs in this behalf, taxed at One Hundred Thirty-Five & 90/100 (\$135.90) Dollars.

Judgment entered April 24th, 1912.

JAS. P. BROWN,

Clerk.

By W. B. Maling,

Deputy Clerk.

A true copy.

[Seal]

Attest: JAS. P. BROWN,

Clerk.

By W. B. Maling,

Deputy Clerk.

[Endorsed]: Filed April 24, 1912. Jas. P. Brown, Clerk. By W. B. Maling, Deputy Clerk. [96]

**[Certificate of Clerk U. S. District Court to
Judgment-roll.]**

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 14,887.

ERNEST E. EVANS et al.

vs.

STANDARD PORTLAND CEMENT CORPORATION et al.

I, Jas. P. Brown, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled action.

ATTEST my hand and the seal of said District Court, this 24th day of April, 1912.

[Seal]

JAS. P. BROWN,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: Filed April 24th, 1912. Jas. P. Brown, Clerk. By J. A. Schaertzer, Deputy Clerk.
[97]

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,
COLEMAN and EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

Bill of Exceptions.

BE IT REMEMBERED, that subsequent to the filing of the answer of the defendant Standard Portland Cement Corporation in the above-entitled cause, said Standard Portland Cement Corporation filed a bill in equity in the above-entitled court against the plaintiffs in the above-entitled action, wherein and whereby said Standard Portland Cement Corporation prayed and sought to enjoin the further prosecution of the above-entitled action at law and to have the promissory notes upon which the plaintiffs in the above-entitled cause seek to recover declared null and void and not binding upon said Standard Portland Cement Corporation and to have said promissory notes delivered up and cancelled.

That in due time thereafter, the plaintiffs in the

above-entitled action answered said bill in equity and thereafter, in due time, said Standard Portland Cement Corporation filed in the above-entitled court its replication to said answer. That said bill in equity, answer and replication present the same issues of fact as those presented by the second separate and distinct answer and defense set up in the answer of said Standard Portland Cement [98*—1†] Corporation in the above-entitled action.

That thereafter it was stipulated in both the above-entitled cause and in said suit in equity as follows:

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

*Page-number appearing at foot of page of certified Transcript of Record.

†Original page-number appearing at foot of page of Bill of Exceptions as same appears in Certified Transcript of Record.

No. 15,249.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation,

Plaintiffs,

vs.

ERNEST E. EVANS, GEORGE COLEMAN and
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,
COLEMAN and EVANS,

Defendants.

Stipulation [Waiving Jury in Case No. 14,887, That Causes be Referred to Master as Referee, etc.].

IT IS HEREBY STIPULATED AS FOLLOWS:

1. That a jury be waived in the first of the above-entitled causes, to wit: No. 14,887.

2. That both the above-entitled causes be referred to H. M. Wright, Master in Chancery of the above-entitled court, as Referee, to take and hear the evidence therein and report the same to the Court, together with his findings of fact and conclusions of law, but said reference and the findings of fact and conclusions of law of said Referee are, in each of said causes, to be advisory of the [99—2] court only and of the same effect as a reference and report of the Referee in a suit in equity in said court, and upon said Referee returning his report to the Court the same shall, in each of said causes, be subject to confirmation or to modification or rejection by the Court upon exceptions by any party in accordance with

equity Rule 83, and the practice of the court in cases of reference in suits in equity.

3. That the evidence in both of said causes be taken and heard by said Referee at one and the same time, and that all of the evidence taken and heard in each of said causes so far as such evidence may be applicable to the issues therein. That the trial of said causes before said Referee and the taking and hearing of evidence therein be in the manner and subject to the Rules and Practice governing the trial in the above-entitled court on actions at law tried by the Court without a jury.

4. That said Referee report the evidence taken and heard by him and his findings of fact and conclusions of law in each of said causes to the Court at one and the same time.

J. R. PRINGLE,
OLNEY, PRINGLE & MANNON,
PAGE, McCUTCHEON, KNIGHT,
& OLNEY,

Attorneys for E. E. Evans, George Coleman and
Percy W. Evans, Partners Doing Business
Under the Firm Name of Evans, Coleman &
Evans.

MORRISON, COPE & BROBECK,
MORRISON & BROBECK and
J. J. DUNNE,

Attorneys for Standard Portland Cement Corporation.

WILLIAM M. CANNON,
Attorney for William J. Dingee and Irving A. Bachman.

[Endorsed]: #14,887. Circuit Court of the United States, Northern District of California, Ninth Circuit. Ernest E. Evans et al., Plaintiff, vs. Standard Portland Cement Corporation, a Corporation, Defendants. [100—2a] Stipulation. Filed April 3, 1911. Southard Hoffman. By W. B. Maling, Deputy Clerk. Page, McCutcheon, Knight & Olney, 1111 Merchants' Exchange Building, San Francisco, California, Attorneys for Plaintiff.

That thereafter, and in accordance with said stipulation, the Court made its order both in the above-entitled cause and in said suit in equity, as follows:

[Order Referring Causes to Master in Chancery as Referee, etc.]

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,
COLEMAN and EVANS,
Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,
Defendants.

No. 15,249.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation,

Plaintiff,

vs.

ERNEST E. EVANS, GEORGE COLEMAN and
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,
COLEMAN and EVANS,

Defendants.

ORDER OF COURT.

In accordance with the stipulation of all the parties to the two above-entitled causes:

It is hereby ordered, that both said causes be, and the same are, hereby referred to H. M. Wright, Master in Chancery of this court as Referee to take and hear the evidence therein and report [101—2b] the same to the Court, together with his findings of fact and conclusions of law.

It is further ordered, in accordance with said stipulation, that said reference and findings of fact and conclusions of law of said Referee are in each of said causes to be advisory of the Court only and of the same effect as a reference and a report of the Referee in a suit of equity in said court, and upon said Referee returning his report to the Court the same shall, in each of said causes, be subject to confirmation or to modification or rejection by the Court upon exceptions by any party in accordance with equity Rule 83, and the practice of the court in cases of reference to suits in equity.

It is further ordered, in accordance with said stipulation, that the evidence in both of said causes be taken and heard by said Referee at one and the same time, and that all of the evidence taken and heard be considered as taken and heard in each of said causes, so far as such evidence may be applicable to the issues therein; that the trial of said causes before said Referee and the taking and hearing of evidence therein, be in the manner and subject to the rules and practice governing the trial in the above-entitled court of actions at law tried by the Court without a jury, and that the Referee report the evidence taken and heard by him and his findings of fact and conclusions of law in each of said causes to the Court at one and the same time.

WM. C. VAN FLEET,

Judge of the Circuit Court of the United States,
Ninth Circuit, in and for the Northern District
of California.

Dated Apl. 3d, 1911.

[Endorsed]: No. 15,249. Circuit Court of the United States, Northern District, Ninth Circuit. Standard Portland Cement Corporation, a Corporation, Plaintiff, vs. Ernest E. Evans et al., Defendants. [102—2c] Order of Court. Filed April 3, 1911. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. Page, McCutcheon, Knight & Olney, 1111 Merchants' Exchange Building, Attorneys for Defendants.

[Testimony, Evidence, etc.]

That thereafter, in accordance with said order, the above-entitled cause, together with said suit in equity,

came on regularly for hearing on Monday, May 22, 1911, before Hon. H. M. Wright, Master in Chancery, Warren Olney, Jr., and J. R. Pringle, appearing for the plaintiffs in the above-entitled cause, and W. I. Brobeck and J. J. Dunne appearing for the defendants. Thereupon the following proceedings were had, and testimony and evidence taken and received. The above-named defendants offered in evidence the deposition of Ernest E. Evans, one of the above-named plaintiffs; said deposition was received and read in evidence, and is as follows, to wit:

[Deposition of Ernest E. Evans, for Defendants.]

Direct Examination of ERNEST E. EVANS.

My name is Ernest Edward Evans. My age is 48. As to my place of residence, I have just sold out my business. Vancouver is my home at present. My occupation has been that of general merchant—shipping agent and commission merchant—and I have been in that business about twenty-one years. I carried it on at Vancouver, British Columbia. My business had connections in the State of California, simply by buying and [103—2d] selling, you might say, down here; I mean to say we were the authorized agents of Balfour, Guthrie & Co., and we used to do a large business together. We were shareholders in the Western Fuel Co., and we were shareholders in the Central Brick Co., and the Western Gypsum Co., and we were shareholders in the Northwestern Portland Cement Co. I never met William J. Dingee. I met Irving A. Bachman once; he came to Vancouver to meet John L. Howard and myself, and we proceeded

(Deposition of Ernest E. Evans.)

to a place called Kendal, near Sumas, in the State of Washington. Kendal is in Whatcom County, I think; I am not sure. That visit which I made to Kendall, in Whatcom County, in the State of Washington, had to do with the production of cement—it was to inspect certain properties. Mr. Howard proposed that visit to inspect those properties; I went with Mr. Howard and a Mr. Riedle and Dr. Bachman. This was prior to the incorporation of the Northwestern Portland Cement Co.; and it was the only time when I met Dr. Bachman. I never met Edward McGary. The full name of Mr. Coleman, who was formerly my partner, is George. Evans, Coleman & Evans had been partners for years; Mr. Coleman is my brother in law, and Mr. Percy Evans is my brother. I am acquainted with Mr. Stockett, Mr. Rand and Mr. Graham. Mr. Rand lives at Vancouver; Mr. Stockett and Mr. Graham live at Nanaimo. Mr. Stockett is Superintendent of the Western Fuel Co.; and Mr. Graham is the Underground Manager, I think, that is his title, I am not sure. Mr. Rand is a real estate agent. Mr. Rand has never met Mr. Howard. As to Mr. Stockett and Mr. Graham, Mr. Howard is President of the Western Fuel Co., and consequently they are under him; and, of course, they know him quite well. I don't know Mr. Foster Young.

As to when I first heard of the Western Fuel Co., as I told you before, we are very intimate with Balfour, [104—2e] Guthrie & Co., and for twenty years we have represented what used to be the Van-

(Deposition of Ernest E. Evans.)

couver Coal Company, when I first went to the country; then it was the New Vancouver Mining & Land Co.; and then they sold out to a syndicate down here, of which Mr. Howard was the organizer; and he was very intimate with the Balfours, and it was through the connection with the Balfours that we heard of it and took shares. When the Western Fuel Co. first came out, we only took \$15,000 worth of stock in it; and afterwards we only increased our holdings to 181 shares, or \$18,100.00. The executive manager of the Western Fuel Co. in San Francisco was Mr. John L. Howard; and up in Nanaimo, Mr. Thomas Russell was the Superintendent. At that time, Mr. Stockett was not employed by the Company. I am not quite positive about Mr. Graham, but I am almost sure not. Mr. Russell was there, to my recollection, about eighteen months, and he was found not up-to-date, and Mr. Howard appointed Mr. Stockett. Mr. Stockett has been in the employ of that Company for some time past. I think Mr. Graham came over shortly after Mr. Stockett; I am not positive; I don't know very much about Mr. Graham,—of course, I have met him two or three times. As to who were the original directorate of the Western Fuel Co., I am not positive about the whole thing; I know that Mr. Howard was the President, Mr. Joe Schmidt was a Director, Mr. Robert Bruce, of Balfour, Guthrie & Co. was a Director, Mr. J. B. Smith was a Director, and I am not sure whether Mr. Sidney Smith was a Director; he became a Director eventually, but whether he did at the inception, I could not tell you.

(Deposition of Ernest E. Evans.)

The Secretary was Mr. D. C. Norcross. The Western Fuel Co. is still in existence and we still retain our holdings; they are split up since we dissolved partnership.

I have heard of a corporation known as the Western [105—3] Building Materials Co.; I learned it first of all from Mr. John L. Howard. Of course, when they started the Western Fuel Co., they were not only dealing in fuel, but they took over the J. C. Wilson business, dealing in coke and pig iron and bricks,—different building material, I think. I understood that the Western Fuel Co. had a retail Coal business, at least the Wilson people had a retail coal business. The Western Fuel Co. and the Western Building Materials Co. dealt in cement; I don't know whether the Western Fuel Co. handled the cement first, or whether this Building Material Co. was formed before they handled cement. Until the works at Napa, California, were started, they used to handle imported cement; in fact, I know they did. Eventually, they handled cement for the Santa Cruz Portland Cement Co. Outside of those two corporations, and the imported cement, I don't know that they handled cement for any other corporation,—I think not. I understand that the Standard Portland Cement Corporation is the same thing as the Napa company. I don't know whether the Standard Portland Cement Corporation was successor to any other corporation.

Mr. Dingee and Mr. Bachman promoted the Northwestern Portland Cement Co. ; they organized that corporation.

(Deposition of Ernest E. Evans.)

Q. Was Mr. Howard in any way interested in that transaction? A. In what way?

Q. In any way whatever? A. As a promoter?

Q. Either as a promoter, or an organizer, or an assistant in any way, in the establishment of that corporation. A. I don't think so.

I went to a place named Kendall, Whatcom County, Washington, to inspect some lands and Mr. Howard was with me. As to the interest which Mr. Howard had in the inspection of those lands, Mr. Howard was representing these two cement [106—4] companies down here,—the Standard and the Santa Cruz; the Santa Cruz was not producing at the time; and I knew that Mr. Dingee was really anxious to have works in the State of Washington,—I learned that through Mr. Howard. Mr. Howard informed me prior to the earthquake down here that Mr. Dingee wanted to control the cement situation on this Coast, and for that purpose (of course, the Standard Portland Cement Corporation Company, or whatever it was at that time, was a financial success, and the Santa Cruz works were then in course of construction.) Mr. Howard—I knew at that time that the Standard Portland Cement Corporation at that time was a financial success, because I had friends of mine outside of Mr. Howard who were shareholders and bondholders in it. Mr. Howard asked me if I knew of a suitable property in the State of Washington; the reason he asked me was because he knew that I was one of the pioneers in investigating the cement business on this Coast, and I had a half

(Deposition of Ernest E. Evans.)

interest in a property in the State of Washington. I have taken considerable interest in the development of the cement business before the Standard Portland Cement Corporation was started. Mr. Howard asked me the position of this property. Well, after the disaster took place here,—he was in New York at that time, Mr. Howard was, and he came back to San Francisco, and he came to me asking the position of the property that I was jointly interested in with Balfour, Guthrie & Co.; and I told him that we were half committed to some people at Antwerp, but that if he made a bid I could probably arrange to get hold of the property. He then telegraphed up, and made a bid on behalf of Mr. Dingee; and I phoned my associates, Balfour, Guthrie & Co., at Tacoma, and told them that they would either have to buy or sell or I would buy or sell,—that was all telephoned from my office. Then, as the Balfour, [107—5] Guthrie people and myself could not come to terms, they asked me if I would accompany Mr. Burns, their Portland partner, down to San Francisco, to consult the other partners here,—that is Mr. Bruce Mr. Sansom and Mr. Alec Williamson. I came down here towards the end of May, 1906, and Mr. Howard met me on the train at 16th Street, Oakland, and asked me what hotel I was going to, and invited me, if I was not going to stop with any one else, to stop with him; and he said, “I know Mr. Bruce has first call.” Well, then, I asked Mr. Howard if he had a fair offer from Mr. Dingee for this property, and he said that he had, and I was authorized to buy the

(Deposition of Ernest E. Evans.)

Balfour, Guthrie & Co.'s interest—I mean I was not willing to be in an uncertain position, because I had said to Balfour, Guthrie & Co., “You have either got to buy, or sell, to me,” and I wanted to be in a position if they said, “We will sell,” to buy, and so be put into that position. And I had an interview at Mr. Williamson's house on Washington Street, and we did not come to terms that afternoon, and they asked me to wait until the morning; in the meantime, they had cabled over to their head office in London, stating that I was there, and that I would either buy or sell, and asking what to do; apparently the reply came back, “We are in favor of buying,” because they bought me out; I understand that two days afterward—I told them who I was negotiating for—for Mr. Dingee and for Mr. Howard—and I heard through Mr. Balfour that two or three days afterward they put an offer in writing to Mr. Howard to be submitted to Mr. Dingee. I made it a stipulation with Mr. Balfour that they would offer the property to Mr. Dingee. The offer was written out and handed to Mr. Dingee—to Mr. Howard; he submitted it to Mr. Dingee, who considered the terms exorbitant and would not have anything to do with it. After I sold out that time I went home that [108—6] night. After I had been home some little time, I had a letter from Mr. Howard telling me negotiations were off with Mr. Balfour, and stating that Mr. Dingee had made up his mind to have a cement works up in the State of Washington, and that he had got men in the field looking for properties. I then wrote Mr.

(Deposition of Ernest E. Evans.)

Howard that I knew a man who I thought had a property. He wrote up, "Get particulars, I am coming up." So I got the particulars, and I got the man up to Vancouver to meet Mr. Howard who was making periodical visits to the mine at Nanaimo,—the mine which was operated by the Western Fuel Co. I arranged a meeting with these two and then Mr. Howard decided he would go back and look at the property and asked me to accompany him, which I did. We went over the ground, and Mr. Howard was quite impressed with it, and he telegraphed to Mr. Dingee that he thought that he had found a suitable property, and suggested that he should send Dr. Bachman up. Dr. Bachman eventually came up—I don't know exactly how long afterwards, I think it was within a week—Mr. Howard in the meantime was stopping in Nanaimo, and came over to Vancouver to meet Dr. Bachman, and we three proceeded to this property, to examine it. As to *held* the property at the time, a Mr. Riedle owned some property there, and different owners. Dr. Bachman telegraphed, I understand, the result of his examination to Mr. Dingee, who by telegraph, authorized Mr. Howard to buy the property for him. Some pieces of property were bought and then there was some litigation about some others. The United States Patent was finally secured, but I could not tell by whom. After we had taken up, or they had taken up, a lot of this property, it was discovered that there was one claim—I might say, here is the hill, and this was the limestone ledge we say at the hill (illustrat-

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ing), that we had all the ground down below, and it was discovered [109—7] that some claim—some piece of land, was vacant; that was not discovered until some time afterward. This vacant land was in between the limestone ledge and the site for the factory. It was an object to acquire it because it was on the right of way. The difficulty was that they thought they might have trouble in getting the right of way. Then, I understand—I am not sure about it, but I understand Mr. Howard staked it off as a stone and timber claim, and I know he had a lot of litigation. I believe it took about two years to settle this litigation; he proved up the land—I don't know—I think it was Mr. Howard—I am not sure. The attorney who did work at the Seattle land office was Mr. Randolph. I presume that he was acting for Mr. Howard, who was representing Mr. Dingee. I don't think there were any other attorneys interested in that litigation; we had some attorneys at Bellingham—Newman & Howard—they did the legal work up there. The Howard to whom I have just referred as a member of the Bellingham firm of Newman & Howard, is Mr. C. W. Howard; he is absolutely no relation to John L. Howard.

Q. For his services in and about the procuring of this land and the organization of this Northwestern Portland Cement Co., what, if you know, was Mr. John L. Howard to get?

A. The reason that Mr. John L. Howard took all this active interest was that he was very anxious to start a branch of the Western Building Material Co. in Seattle, and the understanding was that when

(Deposition of Ernest E. Evans.)

the work started up he was to have the exclusive selling agency of the Northwestern Portland Cement Co., as he had at the same time of the Santa Cruz Portland Cement Co. and the Standard Portland Cement Co. So far as I know he had no other interest in the development of this Northwestern Portland Cement Co. beyond that, except that I suppose—of course, I don't know—but I suppose [110—8] that he was to get some commission in the way of ordinary shares for all the trouble he had taken in finding the property. He was to get these shares as a sort of bonus,—I should think it would be only natural. Mr. Howard told me that he was going to get—that Mr. Dingee had promised him some ordinary shares as a recompense for his services in looking up these properties. In the selection of these properties, in the looking up of these properties, Mr. Dingee took no part personally, and the only part which Dr. Bachman took is the part which I have related here.

I knew Mr. Howard, meeting him in a social way, through Mr. Robert Bruce of Balfour, Guthrie & Co., when he was manager of the Oregon Improvement Company, it is a good many years ago; that is, only in a social way; I had no business relations with him. My business relationship with him began just before the formation of the Western Fuel Co.—I think it was about 1903. Since that time I have had more or less business transactions with the Western Fuel Co.; my firm are the agents of that Company. We still continue the agency for Namaio—up

(Deposition of Ernest E. Evans.)

at Vancouver. We have been the agents of that concern for over twenty years, and their successors—purchasers—continue with our firm as agents; we still are agents. Since 1903 there has been more or less business transactions between me and my firm and Mr. Howard, particularly in connection with the mines; outside of that not very much. Of course, as I say, Mr. Howard pays several visits a year to the mine, and naturally when he comes from the mines he wants to see me, and he used to come to Vancouver, or I would go to Nanaimo and spend the evening with him. From my acquaintance with Mr. Howard and my knowledge of the general situation I understand that the Northwestern Portland Cement Company [111—9] and the Standard Cement Corporation were independent and disconnected corporations at the time for formation.

Q. After they were formed did you ever learn that one of these corporations became absorbed in the other?

A. You are talking about the Standard Portland Cement Company and the Standard Portland Cement Corporation?

Q. No.

A. I will just tell you, I never knew there had been any change or reorganization in the Standard until I saw this document I have just sworn to.

Q. I don't think you understand me correctly, Mr. Evans, and I will try to make myself clear. I am not asking you as to whether the Standard Portland Company and the Standard Portland Corpora-

(Deposition of Ernest E. Evans.)

tion were independent corporations; that is not the point of my inquiry; but what I would like to know is, whether you knew, during these times we have been speaking of, whether the Northwestern Portland Cement Company and the Standard Portland Company, or the corporation, were independent and disconnected corporations.

A. Well, I was never told anything to the contrary, and I naturally assumed, of course, they were. The only site which I knew of which the Northwestern Company intended or endeavored to work was situated in the State of Washington in Whatcom County; I believe that they examined other properties you know and they finally decided on this; and on the other hand, the site which was operated by the Standard Portland was in the State of California. I have always understood that Mr. Dingee was in control of these various corporations, the Standard Portland, the Northwestern, and the Santa Cruz. I could not tell exactly when the Northwestern Portland Cement Company was organized or incorporated, but I should think in December, 1906—at all events, in the latter part of the [112—10] year 1906.

Q. After this date, after its organization, was any plant established on this site in Washington—any factory for the production of cement?

A. First of all, all the preliminary work was done, such as the topographical survey of the land, a certain number of acres were cleared, and the spurs or side tracks were put in.

(Deposition of Ernest E. Evans.)

Q. Was the property developed in any other way with reference to the production of cement?

A. I have not visited it since, but I understand—in fact, I know that the lime, you know, was on the side of the hill, and the land was all cleared, and I believe they started to strip the lime deposit. The lime was exposed, but then they had to clear a right of way. Supposing this was a millsite on the level, the lime deposit was up on the hill, and there was some timber between (illustrating). They had to slash the timber and clear it.

Q. Aside from that, what further development was there on that property, with particular reference to the production of cement?

A. Well, beyond starting this preliminary work, clearing, and building the side track, so far as I can make out nothing else was done. No factory was constructed there. No mill was built. There was some machinery, I think one or two donkey engines for clearing. And a certain amount of machinery was ordered from the Allis-Chalmers Co., I was told. Aside from these two donkey engines, I do not recollect whether any other machinery was actually brought upon the ground; I have not visited the site since. In speaking of machinery, I remarked that some machinery was ordered, but I could not tell you what became of that machinery; I do not know whether it went on the site, or went [113—11] elsewhere.

Q. Have you ever discussed that matter with Mr. Howard or Mr. Dingee or Dr. Bachman?

(Deposition of Ernest E. Evans.)

A. The only time I ever saw Dr. Bachman was on that visit. I never met Mr. Dingee. I have not spoken to Mr. Howard about it. Mr. Howard told me nothing as to what became of the machinery that had been ordered; in fact, I never made any inquiries. So far as I know, the Northwestern Portland Cement Company never had a plant, and never turned out a pound of cement. At the present time, it has no plant, and it is not producing in any way. When I said there was certain machinery ordered from the Allis-Chalmers Company, I am not positive about that.

Q. Can you tell me, Mr. Evans, where the funds came from for this machinery?

A. Well, I was informed—

Q. (Intg.) By whom, please?

A. Before I put up my subscription, from Mr. Howard—through Mr. Howard, from Mr. Dingee, that all the money necessary for the erection of these works was actually forthcoming. Here is a letter from Mr. Howard: “Dingee gives me the present subscription list, viz.:

W. F. Dingee.....\$150,000.00

I. A. Bachman.....\$150,000.00

Crocker Bank Crowd.....\$150,000.00

Napa Subscribers\$150,000.00

J. L. Howard, placed al-

ready.....\$ 95,000.00.”

That is, J. L. Howard had already placed \$95,000.00; that is, he was placing bonds, and, according to his note J. L. Howard had placed already \$95,-

(Deposition of Ernest E. Evans.)

000.00. I subscribed for bonds, but not for the stock; the understanding was that for every bond—the bonds that we subscribed for were \$1,000.00 each; we got \$1,000.00 worth of bond stock. We got ten shares of stock for each bond that we purchased,—that is right, they were \$100.00 [114—12] a share. We subscribed for \$45,000.00; that is to say, I sent \$45,000.00 in cash down here; \$30,000.00 was on account of my own firm, \$5,000.00 on account of Mr. C. D. Rand, \$5,000.00 on account of a friend of mine in England, Mr. E. H. Warner, \$5,000.00 on account of another friend of mine in England, W. P. Warner. I know that Mr. Stockett subscribed for bonds, but as to how many, I can only tell you from reading one of these papers of yours; \$3,000.00, I think it was. I found out eventually that Mr. Graham did subscribe; all the information I know is this paper I saw. I have no information on that point of my own knowledge; I knew they had subscribed, but I did not know the amounts.

Q. When did you first hear of the bond issue?

A. Well, I have a letter here dated San Francisco, 10th December, 1906, asking me what my present mind was with regard to subscribing to the bonds of the Northwestern Portland Cement Company. Mr. John L. Howard wrote me that letter.

Q. I observe that this paper is headed, “Extract from letter sent by John L. Howard to E. E. Evans”?

A. That is correspondence I had my stenographer make copies of some time ago so as to keep it by me.

(Deposition of Ernest E. Evans.)

Q. These papers really represent extracts from the correspondence?

A. Well, the whole letters. The various letters and documents from which the extracts are made here, are in the possession of Evans, Coleman & Evans at Vancouver. Now, if you asked me to produce the originals, I don't know whether I can, because we turned our business into an incorporated Company, and now that I am gone (I am going away for five months) whether these people will tear up the old papers going back a certain number of years, or not, I don't know. These papers are all in the possession of Evans, Coleman & Evans, Limited, the incorporation, [115—13] the new style. They have all our old papers, letters and letter-books and that kind of thing; they are stored there. I had these extracts made probably about twenty months ago.

Q. The first information, then, that you had about this bond issue, you received by this letter of December 10th, 1906?

A. I had been told that this company was going to be formed, and, as I tell you I had, and still have, very great confidence in the cement industry in the State of Washington, and I had been right—have been right, right along, and I was very anxious to get in, but provided the thing was properly financed, as you will see from the correspondence here. I did not receive any information about these bonds from any other source than Mr. Howard.

Q. When Mr. Howard asked you what was the state of your mind concerning these bonds, what, if anything, did you say to him?

(Deposition of Ernest E. Evans.)

A. (Reading:) "In reply to your inquiry as to what my present mind is with regard to taking bonds, my"—This is a letter dated "Vancouver, B. C., 19th December, 1906," from myself, personally, to Mr. John L. Howard,—"In reply to your inquiry as to what my present mind is with regard to taking bonds, my firm's intention right along has been, and still is, to invest \$45,000.00 (say \$15,000.00 each)"—that is, our three partners—"on the basis of two to one"—that is, that would be \$2,000.00 worth of stocks to \$1,000.00 worth of bonds—that is what I understood in the first instance—"but before finally committing ourselves, I think some definite information should be given, or a prospectus issued, as to what the programe is, and what we are subscribing to. For instance, we should know the total nominal capitalization, the amount of cash required (making ample allowances for contingencies) for [116—14] the erection of the works and working capital, whether all of said money required will be forthcoming from the Underwriters, etc. I would also like to know, assuming that \$1,200,000.00 is required, and the nominal capitalization of the company is \$2,000,000.00 in bonds, and \$5,000,000.00 in shares, will \$800,000.00 in shares remain in the Treasury with the \$800.00 unissued bonds, to assist in selling these should more money be required later, or will the promoters take the whole of the ordinary shares in the first issue?" That is all in that letter.

Q. What was the next?

A. I received a letter dated San Francisco, Jan.

(Deposition of Ernest E. Evans.)

7th, 1907, from Mr. Howard to myself. (Reading:) "I saw Dingee and Bachman at lunch to-day. The N. W. Portland Cement Company will be upon the basis of \$2,000,000 bonds, \$5,000,000 in shares. Enough bonds will be sold, and only enough to put the property into working condition. The amount will be greater if a steam plant must be installed, and less if electric power may be had.

Each \$1,000 bond will carry \$1,000 in shares, and in your case, I have promised you an additional \$1,000 on your \$50,000 subscription in addition to 1,000 shares to you personally out of my promotion stock.

I told both B. & D. what I intended doing"—both Bachman and Dingee—"and that I wanted them to recognize your work by chipping in, and I left it with them to mull over. I'll get you more. Now, the securities are ready for delivery.

If you have not changed your mind in respect of this investment, you might send me your cheque, and I will at once send by express the bonds and shares according to this letter.

If you remit, please wire me.

P. S.—The above means that I contribute \$150,000 of your bonus stock."

Then I telegraphed Mr. Howard on the 9th of Jan., 1907. (Reads:) [117—15]

"Letter received, don't you consider company running great risk going ahead until land matter cleaned up. Is all money required positively in sight and will it be put up at once."

(Deposition of Ernest E. Evans.)

Q. What response did you get to that telegram?

A. Here is a letter dated the 11th of Jan., 1907, from myself to Mr. Howard; this is acknowledging his letter of the 4th and 7th.

Q. Would you mind reading that?

A. (Reads:) "I duly received your letters dated 4th and 7th inst. I presume the latter should have been the 5th inst.

"I note all particulars you give about the Northwestern Portland Cement Co., and am quite prepared to put up our subscription of \$45,000, provided you and your advisors are perfectly satisfied that the company will not be taking any risk in going ahead until the title to your stone and timber claim is clear, and further that all the money liberally estimated, which will be required for the erection of works and working capital will be put up at once, and I wired you to this effect on the 9th inst.

The reason I asked the last question is, that in the event of a sudden panic which may occur at any time"—mind you, this was in January, 1907, the Canadian bankers saw something was going to happen, and we had got nervous—"some of the subscribers might find themselves in a position not to be able to raise the balance of the money to complete their subscriptions, consequently it might then be found difficult to raise the money to complete the works, and those who had already paid in full might have their money tied up.

I enclose rough draft giving details of the company, as I understand them from your letters, and

(Deposition of Ernest E. Evans.)

would like you to fill any blanks which I have left, and correct me where I am wrong, particularly in connection with the question as to whether the promoters contribute the real estate and deposits of raw material for ordinary [118—16] shares only." I made out that blank form and Mr. Howard returned it to me filled in. This is his handwriting.

Q. Would you mind reading that, if you please?

A. (Reads:) "The Northwestern Portland Cement Company, Incorporated under the Laws of the State of California.

President, William J. Dingee.

Directors: William J. Dingee.

Irving A. Bachman, V. P.

Edwd. McGary, V. P.

Garrett W. McEnerney.

Frank A. Losch.

Secretary, Frank A. Losch.

Head Office, San Francisco, 1249 Franklin St.

Authorized capital, \$2,000,000.00 in 6% \$1,000.00
1st Mortgage Bonds, secured on the real estate, building, plant, and all assets of the Company, and redeemable on or after Nov. 1, 1911, at \$110. and interest.

\$5,000,000.00 in ordinary shares (50,000 shs. \$100. ea.).

Sufficient bonds only to be sold to erect the plant and provide working capital, each \$1,000.00 bond to carry \$1,000.00 in ordinary shares.

Ordinary shares to the extent of \$3,000,000.00 to be handed the promoters for the real estate and

(Deposition of Ernest E. Evans.)

deposits of raw material, and for promoting the Company.

The plant to be erected with a nominal daily capacity of 5,000 barrels of Portland cement per diem, and to be operated by steam or electric power as the directors may decide."

I don't know how this got in, but I asked Mr. Howard certain questions and these are his replies (reads): "The Northwestern Cement bonds bear 6% interest to the holders but there is a special coupon 3% addition held by the Trust Company to protect the holders under the California law in respect to the payment of taxes."

I don't understand that even now. Then I asked him about the [119—16a] liability of shareholders under the laws of California. (Reads:) "Your statement as to the liability of shareholders under the California laws is correct, as to the Practice runs with going corporations, but as a matter of fact it will be found that these persons are liable who were shareowners at the time of the creation of the debt, but the record of the company is never gone behind, because a buyer of shares buys them with the assumption that he takes the previous owner's place."

I asked him to define clearly to me, as my understanding was that shareholders in a limited company in California were not strictly limited, as according to our law, but that they were liable for the debts in pro rate proportion to the holding of their shares; and in response to that, he writes me this. This telegram of the 9th which I read,—this is Mr. Howard's

(Deposition of Ernest E. Evans.)

reply to it dated the 10th of Jan., 1907. (Reads:) "Mrs. Howard has phoned to me this morning your telegram delivered at the house, in which you ask whether I regarded it as safe for the Northwestern Portland Cement Company to go ahead in view of the unsettled state of the land titles.

As you know, I have greatly demurred at the delay in starting up there, which is one of the causes of our troubles.

I mean by that, if Dr. Bachman had proceeded immediately with his plans, he would have been in constant occupation of the Riedle tract, and nobody could or would have jumped it, but in view of the present situation I have felt free and justified in taking the money from some of my friends and investing it for their account in Northwestern Cement bonds carrying an equal amount of stock as a bonus.

My reason for this is, on January 4th, Mr. Howard reported"—that is C. W. Howard—"that all the assessment work on the Riedle claims had been done, and that on the next day he would file the notice of proof and apply for a patent.

There are no adverse claimants in respect of these claims. [120—16b]

Now, with regard to my own eighty acres, of course the appeal taken by Gregory will hold up my stone and timber application, and pending the decision of the General Land Office, neither Birdwell, Meaney, myself, or anyone else can enter into occupation of that land, but

FIRST:—I am perfectly satisfied that Birdwell

(Deposition of Ernest E. Evans.)

and his backers will be thrown out of court, and I think Randolph's view"—that is the lawyer that was employed in Seattle—"on this point is correct, but considering that nothing is certain in law until you have got it, we know as a fact that Mr. Birdwell did not conform to the law by doing so much work on his locations within the sixty days prescribed by law.

SECONDLY:—Mr. Randolph has consented, and believes it to be a good move, that new placer locations shall be put upon those lands in my interest. They will entitle the new locator to proceed with development work for assessment purposes, and that work can be made to conform to the general and to ultimate plans for the quarry development; so that to my mind it seems clear that I must win on either or both of these propositions.

But up to the time Mr. Howard and Mr. Randolph coincided with the view that new placer locations could be made, and that if made assessment work could be done, I must confess that I thought any action in respect of the sale of securities was a little bit premature.

My view, however, is different now.

The option on the railroad shares has been taken up, and I will probably be elected Vice-President of the railroad company. Mr. Taylor, representing the Mills' interest, will continue as President.

After the Western Fuel Company's annual meeting in February I expect to go north, via. Bellingham.

If you should agree with my view in respect of the

(Deposition of Ernest E. Evans.)

Northwestern [121—16c] Portland Cement Company's securities and take them up, you may rest assured that I will look after your interests in that matter just as closely as I will look after my own."

He followed that up by another letter dated San Francisco, Jan. 11th, 1907. (Reads:) "Yesterday the telephone was working so badly that the whole of your message was not understood, and on arrival at home last night I found your telegram.

The part that I did understand, I answered yesterday. Now, you ask, 'Is all the money positively in sight, and will it be put up at once?'

Mr. Dingee informs me that more than one-half is already subscribed, and the balance of it is assured.

I want to stand under my load of \$100,00; pay it in and get rid of it.

It means that when paid the bonds will begin to bear interest from that date, and if it is to be paid it might just as well be paid first as last.

He and Bachman are taking \$150,000 each; the crowd in the Crocker-Woolworth will take at least \$150,000 with the expectation of more. Napa subscribers, I was informed by Dr. Bachman, wanted about \$125,000, and no special effort has yet been made to push it.

I have not had time as pressure of work and the difficulty of getting about the city has prevented.

You have no idea how irksome it is travelling through the mud in this rainy weather."

Mr. PRINGLE.—That goes on to the description of San Francisco at that time. I don't think you

(Deposition of Ernest E. Evans.)

want that in the record.

Mr. DUNNE.—No.

The WITNESS.—(Reads:) “I was able to see Mr. Dingee for only a few minutes before lunch, and this is the word that I got.

If, therefore, you feel satisfied with this, and yesterday’s [122—16d] explanation of the conditions and my opinions, would it not be just as well to make the investment first as last, and begin to realize the 6 per cent on it.

The factory will most assuredly be built, and as Dr. Bachman left here yesterday for the east, among other things to meet the construction contractor Stewart, the latter will come out to the Coast immediately.”

On receipt of that letter, I telegraphed from Vancouver, dated the 14th of Jan., 1907. (Reads:) “Yours tenth received, mailing 45,000 Frisco to-morrow. Have securities made out in my name.” On the 14th, I wrote Mr. Howard as follows (reads): “I am in receipt of your favor of the 10th inst. and note from same that you do not consider that the Northwestern Portland Cement Co. will be taking any risk whatsoever in going ahead with their enterprise, in the present unsettled state of the land titles.

On the strength of this, I have just wired you that I will remit a draft to-morrow for \$45,000, addressed to you c/o The Western Fuel Co., 340 Stewart Street, San Francisco, on the Anglo-California Bank.

I have asked you to have all the securities made out in my name, to start with, and will transfer them into

(Deposition of Ernest E. Evans.)

different names later. I have put them in my name on the assumption that supposing in the course of years the company gets into debt, and there is an assessment levied on the ordinary shares under company laws of the State of California, that only the shareholders on the register at the time same is levied are liable, and that once shares are transferred the original owners are not liable.

I am afraid you will think me too careful, but I do not wish to take any technical risk whatsoever.

I am quite satisfied with your statement that you will look after my interests as if they were your own. I feel quite confident provided that we are not held up on account of titles, and [123—16e] that the business is managed properly, that it will be a great commercial success, and if no time is lost, the work should be ready for operation in July, 1908."

Then I wrote you on the 15th of Jan., 1907. (Reads:) "Referring to mine of yesterday addressed to Oakland I now beg to enclose draft \$45,000.00 in your favor, on the Anglo-California Bank, San Francisco."

Then, this is a letter dated San Francisco, 19th, Jan., 1907, from Mr. Howard to myself. (Reads:) "I am sending you by this registered mail certificate of Northwestern Portland Cement Company, viz.:

#66 150 shares

#65 150 "

#64 150 "

These were the bonus from the company with your bonds.

(Deposition of Ernest E. Evans.)

I will send you by express to-day 45—\$1000 bonds, numbered from 123 to 167 inc.

There will be an interest charge for you to pay beginning with the date of the last coupon and running until yesterday.

For this I will send you a memorandum and you may remit. The amount will come back to you on the payment of the first coupons. These you may deposit for collection by your bank, or if you like, send the coupons to me for collection.

Now in your letter of the 14th January received last P. M. at home.

Your statement as to the liability of shareholders under the California laws is correct, as the practice runs with going corporations, but as a matter of fact it will be found that these persons are liable who were shareholders at the time of the creation of the debt, but the record of the company is never gone behind, because a buyer of shares buys them with the assumption that he takes the previous owner's place.

As to the official announcements—

1st. As to the control of the Railway, I will ask Mr. Dingee if he has objections; if not, I will see [124—17] to it that when the new officers and directors are elected at the annual meeting, the names shall be published, and then I will advise you.

2nd. As to the beginning of work, I am awaiting news from Dr. Bachman, now east, as to the starting of Mr. Stewart the constructor, and I will give your office what word I get. I am pushing Dingee, and he realizes the importance of making hay, and I will

(Deposition of Ernest E. Evans.)

have him wire Bachman to-morrow.

Dingee gives me the present subscription list,
viz.:—

W. J. Dingee.....	\$150,000
I. A. Bachman.....	150,000
Crocker Bank Crowd.....	150,000
Napa Subscribers.....	150,000
J. L. H. placed already.....	95,000

\$695,000”

Here is a letter sent by John L. Howard to Evans.
Coleman & Evans. (Reads:)

“San Francisco, 21st January, 1907.

Herewith please find U. S. P. O. receipt #3050 for the registered mail package sent you on Saturday, and which contained Northwestern Cement Company’s stock fixtures and check, also Wells Fargo & Company’s Express receipt for 45—\$1000 bonds of Northwestern Cement Company.

We discussed every method of getting these to you, and parties experienced in forwarding such valuable documents advise us by all means to Express them and to declare full value.”

The next one is a letter sent by Mr. Howard addressed to the firm. (Reads:)

“San Francisco, 23d January, 1907.

Would you kindly send me your cheque for \$585, being interest paid for your account to the Northwestern Portland Cement Company on 45 bonds from Nov. 1st, 1906, to January 18, 1907, 78 days at 6%.”

(Deposition of Ernest E. Evans.)

Q. What does the next one deal with?

A. A letter sent to Mr. Howard by myself dated 24th Jan., [125—17a] 1907. (Reads:) "This is to acknowledge receipt of your favours of 15th and 19th inst., also 45 bonds, share certificates Nos. 64, 65, 66, 68, 69, 70 and 71, covering 1900 shares in the Northwestern Portland Cement Co., also cheque \$2664.76 in settlement of statement for expenditure at Kendall.

Bonds. I note that we are to pay interest from 1st November to 18th inst. and will remit as soon as I receive debit note. The bonds appear to me to be in order, but the point which I am not quite clear on is about the 3% which you informed me some time ago was held by the Trust Company to protect shareholders in respect of the payment of taxes. Am I to understand that this comes to 3% per annum."

The next one is a letter sent by Mr. Howard to my brother, Percy W. Evans. (Reads:)

"San Francisco, Feb. 5th, 1907.

I think I was in England at that time.

I am just in receipt of a letter from Mr. Rosebery, who left here on Wednesday night last, visited Kendall, and has returned. He states that in his judgment *an ideal mill* can be built upon the Kendall property.

I insisted, through Mr. Dingee, on his going there so as to forward the preparations of the plans, and now they will be pushed with all speed."

The next one is a letter sent by John L. Howard to my brother Percy W. Evans. (Reads:)

(Deposition of Ernest E. Evans.)

“San Francisco, 8th March, 1907.

My brother had been—of course, we were all anxious to push the thing ahead, and wanted to know what was being done.

I might say privately, that Bachman told me that the plans were all ready, and based on my talk with him since my return, he has resolved to put in a steam plant, and whenever Hendy and Co. are ready with power they will be in a position to negotiate terms, but meantime they will not wait.” [126—17b]

When he refers to Hendy & Co. that is a Mr. John Hendry of Vancouver, who then controlled what they called the Stave Lake Power Company. They were then going to erect a very large electric power plant for the purpose of making electric power, and it was not so very far from Sumas; and he said that he would himself probably put power down into Sumas; and that is what that refers to. As a matter of fact, he could not raise the money at the time being; but they were erecting an immense power plant there by Montreal capitalists.

The next one is an extract from a letter sent by John L. Howard to Percy W. Evans. (Reads:)

“San Francisco, Cal., April 1st, 1907.

While at home on Saturday nursing an ulcerated tooth and an inflamed throat, I received your two letters, March 23rd, and 25th.

You may be interested to learn that Mr. Fred Davis, a Civil Engineer, went north last night to start the works for the cement plant at Kendall.”

(Deposition of Ernest E. Evans.)

Q. The Kendall there referred to is the Kendall in Whatcom County, Washington, of which we have been speaking this morning?

A. Yes, sir, that is right. Then the next letter is dated San Francisco, May 13th, 1907, from John L. Howard to myself. (Reads:)

“I visited Kendall on Thursday. Found that the right of way had been slashed from the railroad into the factory site, and also ten acres of the forty acre piece that is to contain the factory buildings.

The local engineer *is* charge is awaiting and ordered hoisting engine to pull the stumps.

My feeling is that Dr. Bachman's preoccupation has retarded progress, and I shall at once see if I cannot have a little more dynamite put into the work.”

The next is another letter from John L. Howard to myself. [127—18] (Reads:)

“San Francisco, May 16, 1907.

You spoke to me when I was last in Vancouver about the scope of the financial scheme of the Northwestern Portland Cement Company.

I discussed this to-day with Mr. Dingee.

As you know, the authorized bond issued was \$2,000,000, and the authorized share issued was 5,000,000; one million of the bonds will be sold to carry one million of stock as bonus, and the money realized from this sale will be absolutely devoted to construction purposes and for nothing else.

The other million of bonds with one million of stock will be held in the treasury, and, as you are already aware, the remaining three millions of shares

(Deposition of Ernest E. Evans.)

constituted the promotion stock.

Including what you took, I have placed thus far, \$100,000 of these bonds with the appropriate stock bonus.

If it comes in your way to place any on the basis of one for one, and you will write me, I will arrange the matter."

The next is a letter from myself to Mr. Howard dated Vancouver 17th May, 1907. (Reads:)

"Thanks for yours of the 13th inst. giving result of your visit to Kendall. To say the least I am much disappointed at the apparant lack of interest that Messrs. Dingee and Bachman are taking in the Northwestern Portland Cement Co., and it seems very funny business to me that they should call up all the money and let it lie idle, and pay 6 per cent interest on it. If Bachman has got too much to do, why can't they appoint another manager, and let him rush the work. As it is, it looks to me as if they will lose all the good weather which will practically mean that the works will not be ready for operation until 1909, and had I known there was going to be this delay, I certainly would not have put up my money."

The next is a letter sent to John L. Howard, by myself. (Reads:)

"Vancouver, 20th May, 1907. [128—19]

"Thanks for yours of the 16th inst. giving result of an interview you had with Mr. Dingee, with regard to the financial scheme of the Northwestern Portland Cement Company. I understand from this that the money actually realized from the sale of

(Deposition of Ernest E. Evans.)

bonds is to be absolutely devoted to construction of the works; consequently I assume that the consideration for the \$3,000,000 in Promotion Shares is the land for which I presume no cash is to be paid by the Company. Am I also to understand that the Promoters pay the interest on the bonds during construction, or does the Company do this, and is it charged up to 'Construction Account' out of the proceeds of the bonds?

I refer you to your letter of 11th January last, in which you state that \$700,000 had already been raised, viz.:

Mr. Dingee	\$150,000.00
Dr. Bachman.....	150,000.00
Crocker-Woolworth Bank..	150,000.00
Napa Subscribers.....	150,000.00
John L. Howard.....	100,000.00

Am I to understand that the whole of this money has been paid in and has the remaining \$3000,00 actually been raised? If not, is there going to be any trouble in raising it, in view of the present uncertain state of the money market?"

The next is a letter from John L. Howard to myself, dated San Francisco, 21st May, 1907. (Reads:)

"To yours May 7th.

I regret delay in Northwestern Portland Cement Co. matters as much as you do, but I am informed that they are now being pushed. Bachman is said to be in the east contracting for material and equipment.

Am a bit amused at your account of the visit of

(Deposition of Ernest E. Evans.)

Stone & Webster's men regarding power."

This is not relevant at all.

"If I can influence matters, Mr. Hendry's company will get the finest kind of show because he met us like a business man, [129—19a] whereas the others acted like a lot of boys."

Stone & Webster—you have heard of them—they control nearly all the water-power around Seattle and Bellingham,—a Boston outfit.

The next is a letter sent by Mr. Howard to myself dated San Francisco, 5th June 1907. (Reads:)

"I have been much away from home since receipt of yours 20th May.

Your assumption is correct. I am assured that the money realized from the sale of bonds is to be devoted only to the construction of the works of the Northwestern Cement Company. It is my understanding that the promoters give the land in consideration of the issue to them of promoters' shares. I think it is not usual for promoters to pay interest on bonds during the period of construction. The bonds and interest are a charge against the corporation, and it is customary for the latter to charge interest for that period to Construction Cost.

The list of subscriptions that I gave you in January was given me by Mr. Dingee. I do not know whether it has all been raised, but I assume from what has been said to me that it would be ready when wanted to meet construction expenditures, and, of course, until then bonds will not be issued and interest will not run."

(Deposition of Ernest E. Evans.)

Then, this is a letter dated San Francisco, 12th August, 1907, from Mr. Howard to myself. (Reads:)

“Have you been able to get any information from Mr. Hendry or McNeill regarding the power question?”

I omitted writing you on my return as to what I saw at Kendall. The spur track was laid for 1500 feet from the main line. The right of way was cleared for the balance of the distance, and was being graded.

Altogether the factory site and spur track required the clearing of about 50 acres, and on the factory site there were two [130—19b] engines engaged in drawing and piling stumps preparatory to burning.”

So that there were two donkey engines instead of one. I did not know whether it was one or two, you recollect; those are the engines referred to this morning. (Reads:)

“It was estimated that this part of the work would be finished by October 1st, and then there may be a little grading to do, because after the trees and bushes are cut out, some surface inequalities will require to be levelled.”

Now, this is a copy of a letter from Mr. W. J. Dingee, to Mr. Howard dated Sept. 5th, 1907.

Q. How did they come into your possession, Mr. Evans?

A. Well, I presume I must have asked Mr. Howard some questions about the dilatory work, you know,

(Deposition of Ernest E. Evans.)

the work not being pushed. I don't know what the contents of this letter is; I have forgotten. (Reads:)

"In reply to your favor of the 14th relative to the Northwestern Portland Cement Company, will say that the plans are now completed, and have been sent to Dr. Bachman at Nazareth, Pa. I am advised by him that he is now receiving bids for the machinery, and has already let the contract to the Allis Chalmers Company, for the Ball and Tube Mills.

I start east on next Sunday, and will then take up the matter with Dr. Bachman of the letting of the contract for the foundation of the buildings, so that the foundations will be ready to receive the machinery as it arrives.

The people who have bought stock and bonds of this Company need have no misgivings as to our good faith in the matter. That plant will be built, but, on account of the extraordinary money stringency and the slacking up of orders, it has not been pushed as rapidly as it otherwise would have been."

I asked Mr. Howard to give an explanation as to why this [131—20] work had not been rushed as it was arranged to be so we could have the buildings under cover by the fall of 1907. So Mr. Howard wrote on to Mr. Dingee, and that is Mr. Dingee's reply apparently. Well, I did not consider that satisfactory, and I could not get any information, so I wrote to Mr. Dingee myself, and this is a copy of my letter to him, which is dated 20th December, 1907. (Reads:)

(Deposition of Ernest E. Evans.)

“W. J. Dingee, Esq.,

President of Northwestern Portland Cement Co..
San Francisco.

Dear Sir:—

Last January I bought and paid for \$45,000 of 6% First mortgage bonds in the Northwestern Portland Cement Company \$15,000 of which were for personal friends of mine on the distinct understanding and assurance that all the capital necessary for the erection of the works, with a nominal daily capacity of 5,000 barrels of Portland cement, near Kendall, Wash., had been subscribed and paid in, and that the erection of the works would be commenced forthwith and rushed to completion, ready for work early in 1908.

From all the information I have been able to gather, I find that beyond clearing a few acres of land near Kendall, nothing had been done, and as payment for the coupons due on 1st ulto., has been refused even in clearing house certificates, on the plea of legal holidays, as President of the Company, I shall be much obliged if you will answer the following questions which have been put to me by my friends, who are apparently under the impression that I have misled them into what looks to them like a bad investment.

1. When is the first meeting of shareholders to take place, and where?

2. How many bonds have actually been sold and paid for in full?

3. Where are the proceeds from the sale of the

(Deposition of Ernest E. Evans.)

bonds sold [132—20a] deposited and on what terms.

4. How much money has actually been disbursed in connection with the clearing of the land, also in connection with the erection of the works, the understanding being that in consideration of certain ordinary shares, the promoters were to deed over to the N. W. P. C. Co. the real estate and the deposits of lime near Kendall.

In view of the delay in the construction of the N. W. P. C. Company's plant, and the actual completion of the Washington Portland Cement Company's plants near Baker, Wash.—it is all in that district—whose combined capacity will be more than sufficient for the Puget Sound and district markets, would it not be advisable in the interests of all concerned, to abandon the project for the time being, and return the bondholders their money?

Thanking you in anticipation."

I got no reply to that letter. I wrote Mr. Dingee again on the 6th of Jan., 1908. (Reads:)

"Dear Sir:—On the 20th ult. I wrote asking you for certain information in connection with the Northwestern Portland Cement Company, to which I have had no reply, and in case the letter has gone astray, I beg to enclose a copy, and shall be much obliged if you will kindly answer the questions contained therein."

I got no reply to that,—to the first or the second. I wrote to our postmaster in Vancouver as follows (reads):

(Deposition of Ernest E. Evans.)

“Vancouver, B. C. 29th January, 1908.

The Postmaster,

Vancouver,

Dear Sir: We registered a letter on 7th inst. addressed to W. J. Dingee, President of Northwestern Portland Cement Company, 430 California Street, San Francisco, and hold your receipt for same, which is numbered 196. We have had no acknowledgment of this letter, and shall be much obliged if you will kindly [133—20b] write to the authorities in San Francisco, and ask them whether the letter was delivered, when and who signed for it.

Thanking you in anticipation.”

I got statements from the authorities here addressed to the authorities in Vancouver. This is the first one (reads):

“Post Office, Vancouver, B. D. Feb. 1st, 1908.

Post Master, San Francisco, Cal. Registered letter referred to dispatched to San Francisco on the 8th Jan., 1908, bill #8 entry #17 under #196 and acknowledged.”

This is from San Francisco again (reads):

“Feb. 6th, 1908.

Post Master, Vancouver, B. D. Letter in question was delivered Jan. 14-08 to W. H. Cole for addressee under #54982.

“ARTHUR G. FISK, P. M.
KROHN.”

(Deposition of Ernest E. Evans.)

Then the following (reads):

“Postoffice, Vancouver, B. D., Feb. 10, 1908.
Messrs. Evans, Coleman & Evans, City.

Next attached a statement from the Post Master, San Francisco, to the effect that the letter in question delivered to W. H. Cole for the addressee on the 14th ult.”

That gave conclusive proof of the delivery of the letters to which I got no reply. I have not the least idea who Mr. Cole was. Then on the 17th of Jan., 1908, I wrote to Mr. John L. Howard. (Reads:)

“Your namesake”—that is, Mr. C. W. Howard, “at Bellingham, telephoned me yesterday morning, apparently in a great state of mind, stating that the men who had been working on the clearing, under Mr. Davis, the Engineer, and who were laid off two months ago, had not received their pay, and some of them were still on the property waiting for it, practically on the verge of starvation, and were proceeding to file liens.”

Q. Pardon me. The property there referred to is the property at Kendall, Washington? [134—21]

“A. Yes, a Mr. Davis was the engineer appointed by Dr. Bachman and Mr. Dingee. (Continues reading:) “He also informed me that several of the merchants in Bellingham, from whom goods had been purchased, had been interviewing both he and Mr. Purdy,”—Purdy is a banker up there, a kind of a father of Bellingham—“and they distinctly stated that unless they received settlement of their claims forthwith, legal proceedings would be commenced.

(Deposition of Ernest E. Evans.)

Mr. Howard claims that he has communicated with the company, who have not had the common decency to reply, and his object in telephoning me was to ascertain your whereabouts, thinking that if you were advised of the situation, you would see that matters were adjusted without delay, as of course he, Purdy, and others in Bellingham, are anxious to avoid publicity. I therefore wired you to this effect, and this morning have a telegram from Mr. Norcross stating that you would be in Portland all today, and that he had sent a copy of the telegram to Mr. Dingee, who states settlement will be made before the 15th, and I have so advised Mr. Howard.

For your guidance, I have not received any reply from Mr. Dingee to my letter of 20th ulto., and I have again written him, as per copy enclosed. I do not believe for a moment that he did not receive my letter, and I am most anxious to discuss this business with you, and shall be glad to know whether you propose returning home via Vancouver; if not, I will run over to Nanaimo one afternoon, which would be rather inconvenient just now, as Percy"—my brother—"will not be back until some time next week." There seems to be something missing here.

Q. Missing after the letter of January 7th?

A. You see, there is nothing here until the 28th of March, but there was some correspondence—(looks over papers)—no, it is not there. The next step that I took was to have some of my shares—as I could not get any information from Mr. Dingee—the [135—21a] next step I took was to transfer some

(Deposition of Ernest E. Evans.)

shares to Mr. Wenzelburger, and ask him to proceed to the office of the Company, and make an examination of the books, which he did.

Q. After January 7th, what is the next letter in that series? A. In this series it is—

Q. (Intg.) You might as well exhaust that series, I think, Mr. Evans; there are not very many more?

A. The next letter is dated March 28th, because there was a good deal took place between that time and March 28th—there was this letter about appointing Mr. Wenzelburger, and then when I got his report I simply wrote and said that I would come to San Francisco as quickly as I could and consult with the other subscribers, which I did; and you know what happened. This is a letter dated 28th of March after I had gone back, after the arrangements had all been consummated. This was addressed by Mr. Howard to myself. (Reads:) “After the conference with some of the subscribers all bonds of the Northwestern Portland Cement Company”—Oh, I asked him to write me a letter, so I could send it on to this Mr. Rand and Mr. Warner, and the others who were interested, because I knew of the arrangement myself, since I made the arrangement myself.

Q. You made that request to Mr. Howard while you were in San Francisco?

A. Yes, to write me a letter so I could send on a copy of it, and this is what he wrote me (reads): “After conference with some of the subscribers of bonds of the Northwestern Portland Cement Company, I have arranged that the Standard Cement

(Deposition of Ernest E. Evans.)

Corporation will take up the bonds that were subscribed for through the writer, and that corporation will issue in payment its notes for the face value of the bonds, payable on or before one year with interest [136—21b] at six per cent payable semi-annually.

Will you, therefore, please send me your bonds and all the shares, and I will give you receipt therefor, until I deliver you the note as stated.

The Standard Portland Cement Corporation has authority by its Articles of Incorporation to buy and own securities in other corporations.

Its Board of Directors will authorize this step, and I shall be furnished with a certified copy of authority to purchase. Mr. W. J. Dingee will endorse these notes.” Then I sent down the bonds, and I got an acknowledgment and a copy of the resolutions signed by Mr. Young.

Q. Pardon me a moment; what are these letters?

A. Dated the 13th of April, 1908, to John L. Howard, Esq. (Reads:) “Enclosed we beg to hand you 10 bonds of \$1,000.00 each of Northwestern Portland Cement Company, numbered 128 to 137, inclusive. Kindly acknowledge receipt and oblige, Yours faithfully.”

That is No. 1.

No. 2 is to Mr. Howard, dated 13th of April, 1908.

(Reads:) “Enclosed we beg to hand you 10 bonds of \$1,000 each of Northwestern Portland Cement Company, numbered 138 to 147, inclusive. Kindly acknowledge receipt and oblige.”

(Deposition of Ernest E. Evans.)

Letter No. 3, same date, to Mr. Howard:

(Reads:) "Enclosed we beg to hand you 10 bonds of \$1,000 each of Northwestern Portland Cement Company, numbered 148 to 157, inclusive. Kindly acknowledge and oblige."

I sent those in separate envelopes. It was too big a package for one.

Letter No. 4, dated 13th of April, 1908, to Mr. Howard:

(Reads:) "Dear Sir: Enclosed we beg to hand you nine certificates [137—21c] covering 2,000 shares in the Northwestern Portland Cement Company, as follows:

No. 65 for 150 shares in name of Ernest E. Evans.

" 66 " 150 " " " " Do.

" 68 " 1000 " " " " Do.

" 69 " 150 " " " " Do.

" 160 " 30 " " " " Do.

" 179 " 50 " " " " Do.

" 180 " 70 " " " " Adam L. Russell.

" 188 " 250 " " " " John L. Howard,
Trustee.

" 196 " 150 " " " " A. Wenzelburger.

Kindly acknowledge receipt and oblige."

The next thing on the file is the copy of this resolution dated the 5th of May, 1908, and signed by Mr. L. F. Young.

Q. We are familiar with that.

A. Then here is a letter dated the 6th of June, 1908, addressed to Evans Coleman & Evans from Mr. D. C. Norcross. (Reads:) "In one of your let-

(Deposition of Ernest E. Evans.)

ters enclosing us Northwestern Portland Cement Company securities, you asked us to see that the securities were transferred from the name of original holder in order to avoid stockholder's liability.

I have a letter from the Secretary of the corporation dated the 5th inst. notifying me that all of the shares which I delivered them had been transferred on the 25th of May."

Q. By whom was that letter signed?

A. By Mr. Norcross, the Secretary of the Western Fuel Company.

The next is not in the order it is dated, November 24th, 1906, copy of telegram from W. J. Dingee to John L. Howard. Of course, it did not pass through me, but Howard sent it on. (Reads:) "New York, November 24th, 1906. Doctor due Napa Tuesday night, contractor for Northwestern following; letting contracts during December.—W. J. Dingee."

That was in the early stage of the proceeding about pushing the work on. Then here is a copy of a letter to John L. Howard [138—22] from Mr. Dingee dated San Francisco, September 5th, 1907. (Reads:)

"In reply to your favor of the 4th inst. relative to the Northwestern Portland Cement Company, will say that the plans are now completed and have been sent to Dr. Bachman at Nazareth, Pa."—I think we have had this in here before—"I am advised by him that he is now receiving bids for the machinery, and has already let the contract to the Allis Chalmers Company for the Ball and Tube Mills.

(Deposition of Ernest E. Evans.)

I start east on next Sunday, and will then take up the matter with Dr. Bachman of the letting of the contracts for the foundations of the buildings, so that the foundations will be ready to receive the machinery as it arrives.

The people who have bought stock and bonds of this Company need have no misgivings as to our good faith in the matter. That plant will be built, but, on account of the extraordinary money stringency and the slacking up of orders, it has not been pushed as rapidly as it otherwise would have been."

Q. Mr. Howard forwarded that letter to you, did he?

A. To show that, in reply to my various requests urging the pushing of the work.

Q. Now, Mr. Evans, there are some few here which we overlooked this morning. I am going to ask you to read to the reporter #2, #3, #4, and #6.

A. This is dated Oakland, December 3d, 1906, copy of letter from John L. Howard to myself. (Reads:) "I saw Dr. Bachman to-day; he returned from the East on Tuesday night. There are three brothers, Stewart by name—who are constructing the works for his Atlantic Cement Co. in Penna. One of the brothers is on the way here, or is about to leave the East. He and Mr. Rosebery, the Supt. at Napa, will leave for Kendall, the one to locate the factory, the other to see what equipment may be needed for construction [139—23] purposes—I mean not the material, but the apparatus needed for erection, and this the Dr. says is even now being assembled by

(Deposition of Ernest E. Evans.)

Stewart Bros. in Penna. He is greatly pleased with speed and character of their work, and he wants to make the dirt fly.

I have explained to him all the trials and tribulations we endured in connection with this land matter, and he understands it.

Bachman's new deed to the Cement Co. covers the Watson and Zender tracts, and while it purposely omits the Riedle claims, he will convey this land as soon as he obtains title. The deed of trust from the Cement Co. likewise omits the Riedle claims, but covers all property that may hereafter be acquired, so that as soon as Bachman obtains title and conveys it, the Riedle claims will come under the mtge.

This clears the way for the flotation of the Co. and the issuance of bonds and shares, but no steps have as yet been taken."

The next one is #3, extract of letter sent by John L. Howard to E. E. Evans, dated San Francisco, December 10th, 1906. (Reads:) "I saw Dr. Bachman on Saturday and learned among other things in brief that the Atlantic Cement Factory in Pennsylvania 'would be a winner.'

That he and Dingee had secured control of the Northampton Mill adjoining it, which I saw"—the first I have heard about Atlantic or Northampton—"that Santa Cruz would not ship commercial cement until March, because they are awaiting stuff that has been three months on the rails. The kilns, roasters and mills on the 'raw side' are in place, and could be started at once but for the absence of a few fittings

(Deposition of Ernest E. Evans.)

and the lack of a few additional cement millwrights to put on finishing touches.

His intention is to start this as soon as practicable and accumulate a large quantity of Klinker that it may 'age' before being ground. [140—24]

In my own mind I have fixed April 1st as the date of beginning. I have had no word from Randolph about Gregory's appeal. Bachman is still daily expecting a wire that the contractor Stewart has started for San Francisco to join Rosebery and go to Kendall. A 5,000-barrel plant such as they propose is an *immense* thing, as I hear from those who have seen Santa Cruz.

He mentioned during the conversation that he would have to get some N. W. Cement Company's bonds to make delivery to the subscribers for \$150,000 at Napa, as he would soon begin to need money. Some subscriptions have already been handed to me. What is your present mind?"

Then this is #4, extract of letter from E. E. Evans to John L. Howard, dated Vancouver, B. C., 19th December, 1906. (Reads:)

"Thanks for yours of 10th inst. with information as to the Atlantic and Santa Cruz Companies, from which I am glad to see that you are likely to make a nice profit out of your investments in those concerns.

In reply to your inquiry as to what my present mind is with regard to taking bonds, my firm's intention right along has been, and still is, to invest \$45,000 (say \$15,000 each) on the basis of two to one, but before finally committing ourselves, I think some

(Deposition of Ernest E. Evans.)

definite information should be given or a prospectus issued as to what the programme is, and what we are subscribing to. For instance, we should know the total nominal capitalization, the amount of cash required (making ample allowance for contingencies), for the erection of the works and working capital, whether all said money required will be forthcoming from underwriters, etc.

I would also like to know, assuming that \$1,200,000 is required, and the nominal capitalization of the company is \$2,000,000 in bonds, and \$5,000,000 in shares, will \$800,000 in shares remain in the Treasury with the \$800,000 unissued bonds, to assist in selling [141—24a] these should more money be required later, or will the promoters take the whole of the ordinary shares with the first issue.”

What I was afraid of was that these people in floating the first lot of bonds would issue this stock one for one as bonus, and then they would leave \$800,000 bonds in the treasury and pocket the balance of the directors’ stock. That was the reason I asked those questions.

Q. #6.—Would you mind reading that please?

A. Extract from letter sent to E. E. Evans by John L. Howard, dated San Francisco, January 4th, 1907 (reads):

“I saw Dr. Bachman yesterday. He starts East on January 10th.

Stewart, the constructing contractor, will await his arrival there, and then come west. Meantime, he is shipping material by rail. He will go north with

(Deposition of Ernest E. Evans.)

Rosebery, Superintendent of Napa Factory.

The option on the B. B. and B. C. R. R. shares expires on Saturday and they are arranging to take them up."

Q. That letter dated December 20th, 1907, you tell Mr. W. J. Dingee that in January, 1907, you bought and paid for \$45,000.00 worth of 6% first mortgage bonds in the Northwestern [142—24b] Portland Cement Company, \$15,000.00 of which were for personal friends of yours, on the distinct understanding and assurance that all the capital necessary for the erection of the works, with a normal daily capacity of 5,000 barrels of Portland Cement near Kendall, had been subscribed and paid in, and that the erection of the works would be commenced forthwith and rushed to completion, ready for work early in 1908; I ask you, with whom did you have the distinct understanding and assurance referred to in this passage from this letter which I have just quoted to you?

Q. Well, you will have seen from the correspondence that I have just read that all of my correspondence was done through Mr. Howard who got the assurance from Mr. Dingee: you will see from Mr. Howard's letter to me that Mr. Dingee told him so and so.

Q. I had noticed also that Mr. Howard has said certain things to you in his letters to you: did you derive this distinct understanding and assurance from both of these gentlemen?

A. Well, probably I put it too strong there. But I considered that when Mr. Howard said that he

(Deposition of Ernest E. Evans.)

would look after my interests as if they were his own, and that when I had asked these questions, and I made it a condition before I put up my subscription, as you will see from there, that this money was going to be actually forthcoming.

Q. It never was actually forthcoming so far as you know?

A. Well, I did not find that out, Mr. Dunne, until I got Mr. Wenzelburger's report.

Q. In this same letter you ask Mr. Dingee, "When is the first meeting of shareholders to take place, and where?" Was there a meeting of shareholders of the Northwestern [143—25] Portland Cement Company?

A. I never received any notice. The reason I asked that was because, according to our company law, a meeting is to be held within four months after the formation of the Company—a meeting of shareholders. By our law, I refer to the Canadian, British Columbia law; as a matter of fact, I do not know that any such meeting was ever held.

In these matters, I was acting for the firm of Evans, Coleman & Evans, and also for the personal friends of mine whom I mentioned in this letter of December 20th, 1907. I will give you their names, if you want; one was Mr. C. D. Rand of Vancouver: another was Mr. E. H. Warner, I think he is of Quornhall Loughborough, Leicestershire; and another one, Mr. W. P. Warner, of Langton Hall, Market Harbrough in Leicestershire. Mr. E. H. Warner was the master of the hounds. These gentle-

(Deposition of Ernest E. Evans.)

men, all bondholders, they took \$5,000.00 apiece, but Messrs. Warner's bonds were never redeemed for the simple reason that we had to get them from England, by the time they arrived back here Dr. Bachman had gone east and the note was sent east for his indorsation, and he lost it, and the consequence is we still held the bonds.

Q. I observe in your letter January 7th, 1908, addressed by you to John L. Howard, that you state "Your namesake at Bellingham telephoned me yesterday morning apparently in a great state of mind, stating that the men who had been working on the clearing, under Mr. Davis, the engineer, and who were laid off two months ago, had not received their pay, and some of them were still on the property waiting for it, practically on the verge of starvation and were proceeding to file liens"; you have told us that the gentleman referred to here by the phrase "your namesake" was a Mr. Howard and an [144—26] attorney at law in Vancouver, Mr. Evans?

A. No, in Bellingham, of Newman & Howard. The property referred to here was the property at Kendall where the Northwestern Portland Cement Company was supposed to establish its plant.

Q. Now, bearing those facts in mind, I ask you how it came about that Mr. Howard, Mr. J. L. Howard's namesake at Bellingham, should apply to you in the matter of those men and the absence of their pay, the fact that they were on the verge of starvation, and were proceeding to file liens, etc.?

A. For the reason that I was interested in a prop-

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erty up there long before I got connected with this one and I had had a good deal to do with Mr. C. W. Howard whom I knew personally, and Mr. C. W. Howard and Mr. Purdy, the banker were keenly interested in Bellingham and they thought the establishment of these cement works at Kendall was going to be a very great assistance to the support of the town of Bellingham; and I believe that at first several of the bills in connection with the preliminary work were paid through—that Mr. Dingee had remitted the money to Newman & Howard to disburse and he, Mr. C. W. Howard, knowing that I had been there with Mr. John L. Howard at Bellingham, and knowing one another pretty well, he telegraphed me, he said “just for your information,” as he knew I had subscribed a considerable amount of money; naturally, whenever I met him we would say, “Well, what are you doing about these cement works?” Well, of course, you (referring to Mr. Dunne) see all the excuses that were given us about the works not being started, etc., or that they were always going to do something.

Q. But never did it?

A. Never did much. It was in that way that Mr. [145—27] Howard of Bellingham telephoned to me, and of course I was getting anxious. I was anxious to get the work started seeing that the winter was coming on.

Q. Now, Mr. Evans, I observe here in this series of letters a letter dated January 7th, 1908, addressed to Mr. John L. Howard by yourself; following that,

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the next letter in this series is a letter addressed by John L. Howard to yourself dated March 28th, 1908; during the period of time which intervened between January 7th, 1908, and March 28th, 1908, was there any correspondence between yourself and Mr. Howard?

A. Yes. Will you let me have your file again to refresh my memory?

Q. Yes.

A. (Referring to file of letters.) The reason there was this gap was, you will see, from this letter that Mr. Howard was on his way up north, you see. It says here "I therefore wired you to this effect, and this morning have a telegram from Mr. Norcross stating that you would be in Portland to-day." He was on his way north to pay one of these periodical visits to the mine, and also to visit Kendall and the consequence was that I met him; and that accounts for the lack of correspondence. I am not sure where I met him. I am practically sure it must have been at Vancouver, as he usually went from Seattle to Victoria, then up to Nanaimo, then he would come over from Nanaimo in the morning, arriving at Vancouver at half-past 10, and catching the 4 o'clock train to Bellingham, and we would usually spend an hour or two together; he would lunch with me; I am practically sure that was the programme. I recall meeting him in the early part of January, 1908, at one of these places. I could not say which, but I am practically sure it was Vancouver. I had a conversation with him concerning the

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affairs which we have been talking of to-day. [146—28] I told him when I got this intimation, that these accounts had not been paid; I feared that everything was not as it should be—referring to the intimation I got from the other Mr. Howard from Bellingham; seeing that this money—for instance, this letter was dated the 7th of January, and the money to pay these wages was not forthcoming until the 15th of January, I thought—I had some suspicions that the money was not available; of course, I was under the impression that \$700,000.00 had actually been put up on the sale of bonds, and as I knew that practically only a little more than \$20,000.00 had been actually expended there should have been, of course, a lot of money left; and I thought that this money was tied up in the panic, or something of that sort, which occurred in October. Well, as the result of that interview during which Mr. Howard told me that any shareholder in a corporation in the State of California could examine the books of the company, I said that “I think that we should have an investigation”; and he said, “I think that we should.” I said, “Can you suggest anybody to me?” So he suggested this Mr. Wenzelburger. At his suggestion, I transferred a certain number of shares to Mr. Wenzelburger, and instructed him to proceed—I could not tell you the dates, you know—I told him to proceed and make the examination and make a report to me.

Q. I will exhibit to you, Mr. Evans, this certificate #64. Do you recognize your signature to the

(Deposition of Ernest E. Evans.)

stock of the Northwestern Portland Cement Company as the same appears attached and cancelled in the stock-book? (Showing.)

A. Yes, that is my signature. I identify this as the certificate which I transferred to Mr. Wenzelburger for purposes of investigation, as I have described them. The only way I can identify it is by my signature. There is no question at all about my signature; therefore, I presume that the [147—29] certificate must be all right. There were 150 shares. 196 was for 150 shares as shown by this letter. Mr. Wenzelburger's certificate was 196 when that was registered in his name.

Mr. DUNNE.—No. 64, Mr. Reporter, being Certificate No. 64, for 150 shares of the capital stock of the Northwestern Portland Cement Company, the date of the certificate being January 18th, 1907, certifying that Ernest E. Evans is the owner of 150 shares of the fully paid-up capital stock of the corporation mentioned, signed Wm. J. Dingee, President, Frank A. Losch, secretary, with the seal of the corporation attached, and endorsed, "Ernest E. Evans," "Witness A. Lothian Russell."

Q. That certificate you identify, Mr. Evans?

A. Yes.

Mr. DUNNE.—In connection with this, I offer to read into the evidence and into the Reporter's notes, Certificate No. 196, while on this subject. That certificate is in similar form to the other. The number is 196, the amount of shares 150, the date February 10th, 1908. It certifies that A. Wenzelburger is the

owner of 150 shares of the fully paid-up stock of the corporation mentioned. It is signed by Edward McCary, vice-president, and Walter H. Cole, assistant secretary. The stub shows that this certificate was issued for number 64, from Ernest E. Evans to A. Wenzelburger. Below this, the following receipt: "Received the above certificate subject to the Articles of Incorporation, and Bu-laws of the company. A. Wenzelburger." The certificate itself, No. 196, is endorsed: "For value received, I hereby assign the within certificate to the Standard Portland Cement Corporation. A. Wenzelburger." Sig. "O. K. D. C. Norcross."

Further endorsed: "Transferred to L. F. Young, Secretary Standard Portland Cement Co. by L. F. Young, secretary."

Mr. OLNEY.—With the cancellation on the front of it.

Mr. DUNNE.—And, while on this subject, I will state [148—30] that on the stub of certificate No. 64 appears the following entry: "Date issued, January 18, 1907, issued for, 63: from Frank A. Losch, trustee to Ernest E. Evans, Vancouver, B. C."; and on the face of the certificate No. 64 appears the following "Cancelled February 10, 1908"—I think it is; it looks like it—by issue of certificate No. 196. Walter H. Cole, A. Secretary."

Mr. PRINGLE.—What was the date of that cancellation?

Mr. DUNNE.—February 10th, it looks like 1908, to me.

(Deposition of Ernest E. Evans.)

Mr. PRINGLE.—It must be, because 196 is 1908, you see.

Mr. DUNNE.—And No. 196 bears upon its face: “Cancelled May 25th, by issue of Certificate No. 200, L. F. Young.”

Q. What further conversation did you have with Mr. Howard on this occasion?

A. I told you that he suggested that I should appoint this Mr. Wenzelburger. There was virtually no other conversation. I appointed Mr. Wenzelburger and I received his report about the end of February; it is dated—I have it here before me—February 27th, 1908. At this meeting that I had with Mr. Howard there was no discussion between me and him concerning the affairs of the Northwestern company. He didn't know anything at all, and of course he was awfully surprised when he got this—when he heard that this money—that these wages had not been paid. I could not tell you how he expressed his surprise; he was very much surprised. That was all the conversation I had on this occasion. After that I wrote—I wrote Mr. Wenzelburger enclosing him this certificate, and having instructed—I think I did probably—to save time, I instructed Mr. Norcross of the Western Fuel Co.—of course, we were very closely associated, being agents—to hand over this certificate, and I think I had previously written Mr. Wenzelburger what I wanted. I have not any of these letters with me now. I could not tell you whether they are in existence. If anywhere, they are at [149—30a] Vancouver. Mind you, I

(Deposition of Ernest E. Evans.)

am not positive on that point at all. I have Mr. Wenzelburger's report here (witness produces report); that is the only one that I have.

Mr. DUNNE.—I will offer in evidence the report of Mr. Wenzelburger referred to in the testimony of the witness, dated "San Francisco, California, February 27, 1908," and indorsed "Northwestern Portland Cement Company, report by A. Wenzelburger, certified public accountant"; it being the understanding that the copy made by Mr. Potter (the reporter of said deposition) may stand as and for the original.

Mr. OLNEY.—Very well.

EXHIBIT "A."

San Francisco, California, February 27, 1908.

Ernest E. Evans, Esq.,

Vancouver, B. C.

Dear Sir:

Obedient to your request to obtain certain information from the Northwestern Portland Cement Company, and more particularly described in memorandum furnished to me, copy of which is attached hereto, I beg leave to submit the following report:

Owing to the fact that the Secretary of the above-named corporation also holds the secretaryship of other numerous companies represented in the same office, and as such is obliged to attend meetings and hold consultations, it was a difficult matter to get audience; however, I succeeded in getting all the information desired, all the books having been sub-

mitted to me for inspection.

My first work was to examine the By-laws and the Record-book containing the minutes of the meeting. I have taken a synopsis of both and contents of this synopsis answers questions, 1, 2, [150—31] 3, 4, 5, in full and partly questions 10 and 12 and are attached hereto. See Folio 2, 3, 4, 5, and 6.

After exhausting the By-laws and Record-book, I examined the Stock Certificate Book, Stock Journal and Stock Ledger of which I attach full details showing issue of all stock by names and certificate numbers, to whom transferred, the number of shares in force, and finally a complete Stock Trial Balance, all of which I found to be in perfect order. Full detail of this work is to be found in Folios #7 to 12 and complies with instructions #13. This left only the books of accounts to be looked into, viz.:

Cash Book, Journal and Ledger. A synopsis of these is contained in Trial Balance (Folio 13) which I will now comment upon seriatim.

DEBIT ITEMS.

1. W. J. Dingee. Debit Balance. . . . \$9486.07

This is an open account and practically a bank account. Mr. Dingee receiving and paying monies as requires.

2. Irving A. Bachman. Debit Balance 5000.00

Due for bonds held by company as collateral.

3. Edward McGary. Debit Balance. 2000.00

Due for bonds held by the company as collateral.

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4.	Property account. Debit balance. \$5030825.00	
	Of this account \$4999500 represents lands bought from Irving A. Bachman for which he received same amount of the corporation stock; the remainder represents other expenditures made [151—31a] under this head.	
5.	Coupon interest	14220.00
	Bond interest paid on \$295000 bonds.	
6.	Mill Expense	996.13
7.	Expense	3167.69
8.	Machinery....	2473.54
9.	Construction.... Self-	11521.95
10.	“ Bldg....explanatory	7106.88
11.	“ R. R....	7452.04
12.	Engineering	244.38
13.	C. W. Howard, Agt...	500.00
14.	Standard Portland Cement Company.....	7150.00
15.	Santa Cruz Portland Cement Company	105168.33
	Represent payment for rails	
	Items 14 and 15 represent loans to these companies on open book account. The minutes do not show any authorization for these loans.	
16.	E. W. Churchill.....	4000.00
	Company as collateral.	
17.	Bellingham Bay & B. C. R. R. Co..	\$10855.95
	Balance due on Bonds held by the	

bought of this company for use in
the building of the company's R. R.

19. Cash..... 12.20

Cash in office.

Credit items.

20. Capital stock..... 5000000.00

Self-explanatory.

21. Bonds..... 295000.00

Sale of 295 bonds leaving of the
400 delivered by the Trust Com-
pany still 105 on hand and now in
the vaults of the [152—31b]
company.

22. Interest..... 2233.42

Represent Bond Interest accrued
on Bonds at time of sale.

23-30. Sundry credit items represents
amounts due for Merchandise
bought such as Lumber, Hard-
ware, Machinery, Powder, etc., etc.

31. Billingham Bay & B. C. R. R. Co.. 1239.05

Amount due for freight.

32. Santa Cruz Lime Company..... 4000.00

33. Atlantic Portland Cement Com-
pany..... 7500.00

These last two items are open
book accounts and represent cash
borrowed from these Companies.

This completes the financial history of the corpo-
I have not called for any vouchers to substantiate

I have not called for any vouchers to substitute the various expenditures, but I dare say I am morally convinced of their correctness.

While the Secretary did not question my right to inspect the books, he seemed to be in doubt as to my right to make a complete abstract from them, however, on my assurance not to abuse this privilege, I managed to obtain the foregoing information which practically includes every transaction had since the organization of the Company.

Should you desire any further information on any particular point, I should be pleased to endeavor to comply with your request.

In conversation with the Secretary Mr. Young, and Dr. Bachman, I learned that the only reason for not going ahead with the building of the works, is owing to the prevailing financial condition, and that their expectations as regards final results [153—31c] are as hopeful as ever.

Respectfully yours,

(Signed) A. WENZELBURGER,

Certified Public Accountant.

Q. Did Mr. Wenzelburger forward this report directly to you, Mr. Evans?

A. I am not sure whether it was sent direct to me or whether it came through the Western Fuel Company. I have an idea that it came through the Western Fuel Company. Because I had never met Mr. Wenzelburger, and I got his name from them and I asked them to employ him, and, of course, I guaranteed the expense. In reply as to when I re-

(Deposition of Ernest E. Evans.)

ceived it I received it within—of course, it was sent up to me immediately—within three days after its date. I then made arrangements to leave Vancouver as soon as I could for San Francisco. Now, the exact date I could not tell you, but I came down to San Francisco. When I reached here, I made an informal call on Mr. John L. Howard, and I told him that I was surprised at the contents of the report, and he said, "Well, so am I." I had met a Mr. Sidney Smith of San Francisco; he at that time was a director of the Western Fuel Company. He was also a subscriber through Mr. Howard to some of these bonds, and, having a high opinion of Mr. Smith, I immediately went over to consult him—Mr. Howard was busy—in his office in the Merchants' Exchange Bldg. and we arranged that we should get hold of Mr. G. W. Spencer, who has since died. I don't know if you know him. He used to be with Mr. Boardman of the Aetna Insurance Company. He was also [154—31d] a subscriber, and we went to Mr. Howard's office. There we discussed the thing, and we asked Mr. Howard—we came to the conclusion that, as Mr. Howard was—at least, I have never met Mr. Dingee, but as Mr. Howard had a good many dealings with him in connection with the selling of the cement, and as we made our subscription to these bonds through him, we thought that he was the right man to see Mr. Dingee—to see what they proposed doing about continuing the works, or redeeming the bonds. He went over to see Mr. Dingee.

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He was not absent very long. I think that we adjourned until the afternoon. Well, anyhow he came back and said that he had seen Mr. Dingee, and Mr. Dingee had told him that nobody had ever lost any money through him, that they intended going on with the works but that it was not advisable in view of the financial situation to press the construction now, but he said, "If your friends are uneasy, I will arrange to buy these bonds back," so he said, "I cannot pay for them myself, but I can arrange either with the Standard Portland Cement Company to buy them or the Santa Cruz." So Mr. Howard came over with that report and I said, "Well, that seems to be fair, but of the two companies I would prefer the Standard, for this reason, that I knew that they had redeemed some of their bonds, that according to this Mr. Wenzelburger's report the Santa Cruz Company was indebted to the Northwestern Portland Cement Company," so I said, "Provided that it is a legal transaction that they have a power to buy these bonds, I was quite willing to agree to their proposition," which was that they would give us a note dated the first of May, bearing interest at the rate of 6% per year.

Q. Who are "they"?

A. The Standard Portland Cement Corporation. I was informed that a Mr. McEnerney—I never knew him, or hadn't heard of him before—had told Mr. Dingee that it was perfectly [155—32] legal transaction, and we arranged that Mr. Sidney Smith

(Deposition of Ernest E. Evans.)

was to get the articles of association and pass his opinion on it. Mr. Smith got the articles and he read them over, and he said, "They are authorized to do this." "Well," I said, "then we must be sure, now, that you say they have the power, that a directors' meeting is duly called in accordance with the articles of association to authorize this transaction, and that we must get a stamped copy of the resolutions," all of which was done, and finally, when it was done, we handed over our bonds; but before agreeing to the proposition I took advice and I was informed on all sides that they had the power to do it. I did this because I had been mixed up with companies in our place, and I know you have got to have special resolutions for all these different propositions. I understand that Mr. Dingee told Mr. Howard as to Mr. McEnerney's opinion, and Mr. Howard told us at the meeting. However, I was not satisfied with that. I wanted Mr. Smith to look into the articles himself.

When Mr. Howard first approached Mr. Dingee on this proposition, Mr. Dingee said they intended to go on with this proposition, that it was a part of their scheme, the controlling of the cement industry of the Coast, but it was not advisable to push on now on account of the slackness in trade and a stringency in the money market, and he said, "Well, if your friends are nervous I will arrange to retire the bonds." Nothing that I am aware of was said about any offer by Mr. Dingee personally to take up these bonds, because I knew pretty well at that time that

(Deposition of Ernest E. Evans.)

Mr. Dingee was not in a position to take up the bonds himself, because it was common report that he was pretty well tied up to the Crocker Bank.

Q. Was anything said about any proposal by Mr. Dingee and Mr. Bachman to issue a note to take up these bonds? [156—33]

A. I insisted also that the notes be indorsed by Mr. Dingee. I never mentioned anything about Mr. Bachman, but, anyhow, when I got the note it was indorsed both by Dingee and Bachman. I do not recollect that, at any time during these negotiations, anything was said about Mr. Dingee and Mr. Bachman, or either of them, issuing a note indorsed by the Standard Portland Cement Corporation. It was a straight note; the proposition was a straight note from the Standard Portland Cement Corporation, or, at our option, the Santa Cruz, and we chose the Standard.

Q. That was the ultimate shape the arrangement took?

A. There was only one interview between Mr. Howard and Mr. Dingee. He came back with this proposition. I suggested the indorsement of the notes, and my suggestion was limited to Mr. Dingee, but when I received the note, I found Mr. Bachman's indorsement upon it. Of course, I was pleased when I got that. When the resolutions, and all this, that and the other, had been passed, we sent down our bonds and our certificates. At the time of that meeting I could not tell you whether I had left for Van-

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couver or not. I know that I was not present at the meeting of the Standard Corporation. I had never seen Mr. Dingee. I could not tell you how long I remained in San Francisco on this visit. I suppose I was here, not exactly on that visit, because during the visit I made a visit to the Santa Cruz plant to see that. I had never seen a big cement plant before. I went down there, and Mr. Howard and Sidney Smith went with me. I think I was down here altogether for a fortnight and I spent three or four days at Del Monte. I was about a fortnight in the State of California and then returned to Vancouver.

I have not taken any steps of any kind against the Northwestern Portland Cement Company itself, because when I received the report, as I told you, I thought it was advisable [157—34] to come down here and consult both Mr. Sidney Smith and Mr. Howard as to what was the best to be done; and the result of that took the shape of these notes—the notes of another corporation, the Standard Portland.

Q. What I am asking you now is, why you did not prosecute your rights as against the Northwestern rather than come down here to negotiate these notes.

A. To prosecute our rights against the Northwestern?

Q. Yes.

A. Well, I think that we—we discussed that, and we came to the conclusion that the best thing was to see Mr. Dingee and see whether he intended to go on with the scheme; and he assured Mr. Howard that it was his intention to go on with it when the clouds

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rolled by. I did not accept that assurance. Then, at that interview, he said, "If your friends are nervous, well, I can arrange to retire these bonds."

Q. In point of fact, you knew that the Northwestern was not a going concern?

A. When I got that report I did. I knew that they had abandoned the thing on account of financial stringency for the time being.

Q. You did not agree to retain these bonds?

A. No. What I looked at was this, that they had missed their opportunity to a certain extent; of course, I was wrong as the country has developed so much more since then; but at that particular time, owing to the delay in construction of the Northwestern Cement Works, larger works had been built in the meantime, and consequently when they started them they would have to face competition and to me at that time the proposition did not look as good as in the first instance from a purely commercial standpoint. [158—35]

There is no question at all but I understood the proposition of the bond issue of the Northwestern company to be to put up works there with a capacity of 5,000 barrels a day. I did not learn what became of the proceeds of the bond issue until I got that report; but when I got that report, I saw then that only a little of the proceeds of that bond issue had been employed in the development of the Northwestern company—I mean to say, the bulk of it had not been. Under these circumstances, I felt that it was best for me to get rid of those bonds. I considered that it

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was not right that this Northwestern Portland Cement Company should be a loaning institution, which it virtually was—that I subscribed my money for legitimate commercial purposes. Knowing what I did about the history of the Northwestern and having in my mind the contents of Mr. Wenzelburger's report, I would not have accepted a note on the Northwestern company in exchange for my bonds. I should have been giving up my security for nothing. I should have been giving up my security for their note. I thought that the bonds were worth more than their note. I could not tell you whether those bonds were listed. They had a market value, because they had assets behind them; they had the assets of a certain number of shares in the Bellingham Bay and British Columbia Railway; the Santa Cruz Portland Cement Company owed them considerable amount of money which I considered good, and there were other assets there which were liquid. The property was worth something. The machinery was worth something. Those donkey engines were worth something. In fact, I think I roughly figured it out that the property—the stuff was worth—I mean to sell it off and liquidate the thing would have brought about probably \$240,000 to \$250,000.

I knew that there was to be a meeting of the directors of the Standard Portland Cement Company; that was the understanding [159—36] from Mr. Howard—well, at least, as I told you, I asked Mr. Sidney Smith to examine these articles of association to find out whether they had the power to enter into a transaction of this sort and his opinion confirmed

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the opinion which I understood Mr. McEnerney gave to Mr. Dingee. Then I said, "All right; see that a meeting of the directors is called strictly in accordance with the articles of association, and that we get a stamped copy of the resolution that was passed"; and I understood that everything was done to conform to the law.

Q. You understood that from Mr. Howard?

A. Oh, well, I mean to say I got a copy of the resolutions; of course, I was not at the meeting; naturally I was not there.

Q. After you returned to Vancouver was there any correspondence between you and Mr. Howard?

A. No, I simply returned the—sent down the bonds, and the shares to them, and got his acknowledgment. That was all there was to it until the note came due on the first of May, 1909. Oh, yes, the interest, I think, was to be paid half yearly. Of course, we made formal application for the interest, but we did not get it; and I think I asked Mr. Howard whether we could take any steps till the note came due—which we could not. When the note came due, I told him that we wanted him to place the matter in the hands of some solicitors for collections. At the times of these transactions, at the time of the meeting of the directors of the Standard Portland Cement Company, Mr. Howard was absolutely not connected in any way with that Company except as sales agent for their product; he was not an officer or director of that corporation. I don't think I have any other correspondence except that I have pro-

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duced here dealing on this matter; it is such a long time ago, and I have been a pretty busy man. I don't think I have. I [160—37] don't think there would be any more at Vancouver, bearing on this thing, because I had all the material points all copied out. I brought with me all bearing on the matter at the request of Mr. Olney.

Mr. DUNNE.—(To Mr. OLNEY.) Would it be satisfactory to make any motion we might be advised to make to strike out, at the end of the direct examination of Mr. Evans?

Mr. OLNEY.—Oh, yes.

Mr. DUNNE.—All right.

The Witness continuing: My firm actually took 45 bonds. As to the bonds we personally took, Mr. Coleman, my brother and myself were equal partners. We took \$30,000.00, which would be 10 bonds each, making 30 bonds. Of the other 15 bonds, 5 bonds were handed to Mr. Rand, which were handed back, and the other ten bonds were sent over, 5 to Mr. W. P. Warner, and 5 to Mr. E. H. Warner, of England. I presume that Messrs. Stockett and Graham got their bonds through Mr. Howard. I am practically sure of that from what Mr. Stockett told me. I did not know this of my own knowledge. I did not know till some time after that Mr. Stockett and Mr. Graham had some. I am not positive about how many shares of stock our firm got with these 30 bonds; yes, we got for every thousand of bonds a \$1,000.00 in ordinary shares, which would be 10 shares of stock to the bond—\$100.00 shares. We

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were entitled to 300 shares of bonus stock on our 30 bonds—they were the terms of the subscription—that is right. The number of shares of stock which we actually received was 2,000 shares. I must have had these because these were returned, you see (reading): “Enclosed we beg to hand you 9 certificates covering 2,000 shares of the Northwestern Portland Cement Company.”

Q. What letter are you referring to now?

A. I am referring to the letter dated 3d of April, [161—38] 1908, marked #4, when we returned the bonds and the shares. That is a letter addressed to Mr. Howard in the name of the firm dictated by me. The facts that refer to the receipt by me of these 2,000 shares of stock are that in the first place, Mr. Howard told me that he should get two to one; that was the original scheme of floatation—two shares for every bond—I mean twenty shares for every bond; that is right. Then Mr. Howard told me that I was entitled to some remuneration or commission for introducing the property and that I was to get some commission which was never definitely stated.

Q. Was this a recompense for the introduction of the property and your visit to Kendall?

A. Well, it was for—just like a real estate agent, you might say, introducing a property.

Q. Introducing the property to whom?

A. Well, to Mr. Howard for Mr. Dingee.

Q. When you refer to the introducing of the property to Mr. Howard for Mr. Dingee, have you in mind

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the occasion when you and Dr. Bachman went to Kendall?

A. When Dr. Bachman and I went to Kendall, this was afterwards. As I told you yesterday, after my visit to San Francisco, when Mr. Dingee could not come to terms with Balfour Guthrie & Co. for their property, he sent agents into the field to look for a property. My visit to Kendall was in 1906.

I did not return any of this bonus stock to Mr. Dingee personally. I sent it on down with the bonds—everything.

Q. I will exhibit to you certificate #65 for 150 shares, and ask you if you recognize your signature on the back thereof? (Showing.)

A. Yes, that is my signature. That is not my writing (indicating). [162—39]

Q. Above it. Do you know whose handwriting that is above it?

A. No, I could not tell you; that is my handwriting (indicating), and that is my handwriting (indicating). I simply indorsed in blank. I don't know about Mr. Wenzelburger's. The indorsements on #165 read: "Transfer to the order of William J. Dingee. Ernest E. Evans. April 11th, 1908." And below that again a further indorsement: "Transfer to L. F. Young, trustee. William J. Dingee, by L. F. Young, as attorney in fact." The only portion of that indorsement which I wrote was my signature and the date, and the reason I put the date in was because I was nervous about the liability under the laws of California, and I simply put the date to show the

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date I transferred. Certificate #166 for 150 shares and the indorsement on its back are just the same; the signature and the date are in my handwriting. The indorsement reads: "Transfer to the order of William J. Dingee. Ernest E. Evans. 11th April, 1908." A further indorsement: "Transfer to L. F. Young, trustee. William J. Dingee, by L. F. Young as attorney in fact." I indorsed this simply in blank.

So far as certificate #68 for 1,000 shares, and the indorsement on the back thereof, are concerned, the signature and the date are in my handwriting. The indorsements read as follows: "Transfer to the order of William J. Dingee. Ernest E. Evans. 11th April, 1908." A further indorsement: "Transfer to L. F. Young, trustee. William H. Dingee by L. F. Young, as attorney in fact." The indorsement on this certificate #68 was likewise in blank when it left my hands.

My former answers as to #68 are equally applicable to certificate #69 for 150 shares. The indorsements are as follows: "Transfer to the order of William J. Dingee. Ernest E. Evans. 11th April, 1908." A further indorsement: [163—40] "Transfer to L. F. Young, trustee. William J. Dingee, by L. F. Young, as attorney in fact." When this certificate left me it was indorsed merely in blank.

The sole indorsement on the back of certificate #70 consists of my signature; in other words, it is an indorsement in blank.

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The indorsements on the back of certificate #71 for 150 shares is in my own handwriting. The sole indorsement on the back of certificate #71 consists of my signature; in other words, I indorsed it in blank.

As to the indorsements on the back of certificate #159 for 70 shares, the whole of that is in my own handwriting except "Witness: Jean Heughen," and she was a witness to my signature. There are no other indorsements on the back of certificate #159 except the following, "For value received, I hereby transfer the within 70 shares to Adam L. Russell, 1320 Harwood Street, Vancouver, B. C. Ernest E. Evans, Vancouver, B. C., 4th May, 1907. Witness: Jean Heughen." These constitute the entire and sole indorsements on the back of certificate #159.

As to the indorsements on the back of certificate #160, for 30 shares, the signature, my name, and the date, are in my handwriting. These indorsements read thus, "For value received, I hereby assign the within certificate to the Standard Portland Cement Corporation. Ernest E. Evans. 11th April, 1908"; then below that, the abbreviation: "Sig. O. K. D. C. Norcross"; a further indorsement, "Transfer to L. F. Young, Secretary. Standard Portland Cement Corporation, by L. F. Young, Secretary." I indorsed this in blank as I did the others.

As to the indorsements on the back of the certificate [164—41] #179 for 50 shares, the date and my own name are all that is in my handwriting; these indorsements read as follows: "For value received,

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I hereby assign the within certificate to the Standard Portland Cement Corporation. Ernest E. Evans. 11th April, 1908." "Sig. O. K. D. C. Norcross." "Transfer to L. F. Young, Secretary. Standard Portland Cement Corporation, by L. F. Young, Secretary." As a matter of fact, when certificate #160 and 179 left my hands, which are the certificates apparently assigned to the Standard Portland, they left my hands with a blank indorsement only. The certificates were all in blank, except that one to Russell in the first instance.

As to the indorsements on the back of certificate #164, my signature and the word "witness" are in my own handwriting. Mr. A. Lothian Russell—I don't know how he came to indorse that, but I think it was just as a witness, you know. That is in his handwriting. Mr. Russell was—I don't know what you would call it in this country—a salaried attorney of the firm; that is to say, he got a salary and a certain commission of the profits. Mr. Russell has also put his notarial seal on that. When I sent this down to Mr. Wenzelburger, I thought I would not take any chances if I had my signature certified to by a notary public, and Mr. Russell is a notary public; so that the indorsement reads, "Ernest E. Evans. Witness: A. Lothian Russell," with the notarial seal of Mr. Russell attached.

As to the indorsements on the back of certificate #196 for 150 shares, none of those are in my handwriting; this certificate they simply transferred to me, indorsed by Mr. Wenzelburger in blank, and I

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sent it back just as I received it; I sent it back to the Western Fuel Company, of which Mr. Howard was the President and Mr. Norcross was the Secretary. [165—42] The indorsements on this certificate #196 are as follows: "For value received, I hereby assign the within certificate to the Standard Portland Cement Corporation. A. Wenzelburger." A further indorsement, "Sig. O. K. D. C. Norcross." A further indorsement, "Transfer to L. F. Young, Secretary, Standard Portland Cement Corporation by L. F. Young, Secretary." When I received this from Mr. Wenzelburger, it was simply indorsed in blank by him; he returned it with his certificate of examination—his report. I held it until we had sold the things to the Standard Portland Cement Corporation; and on April 13th, 1908, I forwarded this certificate to Mr. Howard, the President of the Western Fuel Company; and my letter of April 13th, 1908, shows, among the certificates there listed, certificate #196, for 150 shares, in the name of A. Wenzelburger. This letter of April 13th which I have referred to is the only letter which I wrote to Mr. Howard concerning or affecting these certificates of stock. I forget the exact date the arrangement was entered into, but I was down here at the time that I went to Del Monte and when I got back to Vancouver I got all these certificates together, and sent them down to be exchanged. Everything was arranged down here: I simply had to return these things to be handed over in exchange for the note. No letters beyond these passed. So far as the correspondence

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goes, these letters which I have exhibited here are the only ones.

I was in Vancouver when I received Mr. Wenzelburger's report. I received it about the end of February.

Q. In this conversation which you had with Mr. Howard at Nanaimo in June—

A. (Intg.) I rather think it was at Vancouver, you know.

Q. Oh, I see, well at either place?

A. His habit was at that time to go from Seattle to [166—43] Victoria, and from Victoria to Nanaimo; then he would take the boat over in the morning, leaving Nanaimo at 7 in the morning and getting to Vancouver about 10:15; then he would leave at 4 o'clock in the afternoon for Bellingham which is only about two hours' ride.

Q. Assuming the conversation occurred in Vancouver, I wish that you would relate as fully as you can all that you recollect of that conversation.

A. I forget exactly what took place, only I told Mr. Howard that in view of our not being able to get any information whatsoever from Mr. Dingee, and in view of our having received word that these accounts had not been paid, that we ought to have an investigation made. Then he informed me according to the laws of the State of California, any registered shareholder had the right to go into the register office of the company and demand to see the books. I said, "Very well; now, I want to have that done," and I said, "The proper person to do that is a first-class

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accountant. Can you recommend me a man?" And he said that he knew of a man—no, as he was going down to San Francisco, that interview must have been in Vancouver. "Now," I said, "you arrange with this man to make the investigation." Now, whether I wrote Mr. Wenzelburger or not, I could not say. I do not recollect anything further that was said in that conversation. These suggestions that these books should be examined did not originate from Mr. Howard. It originated with me. The information came from him that a registered shareholder might examine the books. He told me it was the law. He told me what the law was—that any shareholder—I mean to say a properly registered shareholder could go into the companies' office and demand to see the books.

I do not recollect anything further that was said in that conversation, and I have given now my entire best recollection [167—44] of the conversation. This was before I had received Mr. Wenzelburger's report.

When I received Mr. Wenzelburger's report, I did not communicate in any way with Mr. Howard. I came down to San Francisco as soon after as I possibly could. That would be sometime in March; early March it was. I was delayed a little by my brother, who was my partner. He was down with typhoid fever and I could not get away right away. I think I was delayed about ten days. Within about ten days after the receipt of the Wenzelburger report, I came down to San Francisco. I do not recollect

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writing any letter of any sort to Mr. Howard prior to coming except that I might have written him saying that I was coming down. Oh, naturally I would have done that, I suppose. I do not recollect whether I wrote anything else, nor do I recollect having received any letter from him.

Mr. Dingee offered to me, through Mr. Howard, my choice as between the note of the Santa Cruz Company and the Standard Portland Cement Corporation, and I preferred to select the note of the Standard Portland Cement Corporation.

Q. Was anything said by Mr. Howard as to Mr. Dingee's ability to give these notes of theirs of these companies?

A. Yes, he told me, as I understand it, that Mr. Dingee had consulted his legal friend, Mr. Garret McEnerney, and that they had the power to enter into a transaction of this sort.

Q. That is with reference to the legal aspect of it; but was anything said by Mr. Howard concerning Mr. Dingee's ability to give you the note of either of these companies by reason of his control over the companies?

A. I don't recollect his saying anything about that at all.

Q. But, at all events, his ability to give the notes was never questioned, was it? [168—45]

A. It was unquestioned. After Mr. Howard's interview with Mr. Dingee, we did not discuss what should be done in the event that no settlement was possible. That subject matter never came up. It

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never came up at any time as to what should be done in the event that no settlement was practicable. As I told you, when I came down to San Francisco, the first man I consulted was Mr. Sidney Smith, who I had known. He was a practicing lawyer in San Francisco; not only that, he represented certain British institutions, the Bank of British Columbia, and Canadian Bank of Commerce. I had met him on different occasions; not only that, he was a director of the Western Fuel Company, and a man I had a very high opinion of, and, knowing he was interested financially in this very same thing, naturally he was the man I saw at first; and, as I say, I went over to his office in the Merchants' Exchange Building. We had an informal talk and we got hold of Mr. George W. Spencer, as I say, he has since died; and we went over and had an interview with Mr. Howard. I interviewed Mr. Smith. I interviewed Mr. Howard. Of course, naturally, when I arrived I paid my respects to Mr. Howard, naturally, as one of the first things I did when I arrived in San Francisco. In the morning, I usually go around and see my friends, the Balfours, first, and then I go to see the Western Fuel Company. But the first person whom I discussed this particular business with was Mr. Sidney Smith, and that was before I opened the subject with Mr. Howard. When I had my conversation with Mr. Smith, we discussed together what was the best thing to do, whether we should go and interview Mr. Dingee ourselves, or whether Mr. Howard should. I could not tell you what facts I stated

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to Mr. Smith. He got a copy of Mr. Wenzelburger's report.

Q. From whom did he get that report?

A. When I got it I had several typewritten copies [169—46] made up. I sent one down—I don't know how many I sent down here. No, I did not send it to Mr. Smith direct. I sent it to Mr. Howard. I am not positive whether I exhibited one to Mr. Smith but Mr. Smith had seen it, because directly I got it I had copies made, and sent it down. In my conversation with Mr. Smith on this occasion, I don't remember whether any reference was made to the Wenzelburger report.

Q. Did you refer in that conversation with Mr. Smith to any of the acts or conduct of Mr. Dingee in handling the affairs of the Northwestern Portland Cement Company?

A. Well, I told him that I had written to Mr. Dingee for information, and I could not get any reply.

Q. So that your conversation with Mr. Smith turned upon the dealings and conduct of Mr. Dingee in the affairs of the Northwestern Portland Cement Company—that was what you went to consult him about, wasn't it?

A. Well, I went to consult Mr. Smith to see what he thought in his judgment—what we both thought in our own judgment was the proper procedure to take in connection with finding out what they intended to do with the Northwestern Portland Cement Company. The affairs of that company was

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the subject of the conversation that time between me and Mr. Smith, and it was to get some light on that subject that I went to Mr. Smith to learn what was the best course of procedure to follow; that is, I mean to say, he was interested, but as a solicitor in whom I had confidence. My ultimate object in the matter was to find out—get some information as to my investment.

Q. Was your object simply to get information, or was it to get your money?

A. Well, I wanted to get some definite information as to whether—they had stopped work, as you know—I wanted to get some definite information as to when they were going on [170—47] with their work, or whether they were going on with their work at all, or what. I had not formed any plan in my own mind as to what I intended to do. I came down with a perfectly open mind.

Q. Notwithstanding the information you received from Mr. Howard in Vancouver that these men were starving upon the property, you came down simply to inquire further information on that subject; was that your idea?

A. I came down to find out the exact condition of affairs, that is what I came down for.

Mr. OLNEY.—Mr. Dunne, I call your attention to the fact that your question misstated the fact.

Mr. DUNNE.—I don't want to do that.

Mr. OLNEY.—No, I am mistaken. I got the two Howards mixed.

Mr. DUNNE.—Yes, I am referring to the Howard

(Deposition of Ernest E. Evans.)

referred to in the letter of January, 1908.

WITNESS.—C. W. Howard, he gave me this information about the men starving on the property, and about not having their wages, and about to put liens on, and that sort of thing. I came down to San Francisco to find out the position of affairs, just as you or anybody else would. I could not get any information from Mr. Dingee; neither could Mr. Howard. I had formed no definite plan as to what I intended to do; of course, not being conversant with the laws, and not having very much of an opinion of the procedure under the laws, I wanted to get into right hands, and, as I say, Mr. Smith has represented several British institutions for some time, and, naturally, being a Britisher, I went to him; I might have gone to you had I known you. As to the payment of the various claims referred to in the last paragraph of the letter of January 7th, 1908, I got information from Mr. C. W. Howard of Bellingham that the money had been remitted by telegram, and that the claims had been paid. I mean [171—48] to say, that he was disbursing. I could not tell you the exact date when I got the information, but in this letter it says that the claims will be paid before the 15th, and I know they were. Now, what date, I could not tell you, it was before the 15th of January, 1908, or by the 15th of January, 1908, Mr. C. W. Howard of Bellingham told me that he had received the money. In 1908, especially during the month of February, 1908, there was accrued interest unpaid on the outstanding bonds of the Northwestern Port-

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land Cement Company. The coupon due on the first of November, 1907, was not paid; of course, that was the time of the panic, you know. I know that according to this report the stock of the Bellingham Bay Railway was bought, and, of course, it was the property of the Northwestern Portland Cement Company. I do not know where that stock was in February, 1908, or anything about it. It was reported up there that the stock had been bought—the Cornwall interest had been bought by Mr. Dingee; but I did not know anything about it until I saw that report, that is to say, who the owners were; and that is the extent of my knowledge about that stock.

It was Mr. Dingee who suggested inserting the terms of one year in these notes sued on here. I got that information through Mr. Howard as the result of his interview, which we asked him to go and make; and I agreed to that length of time. We thought that it was but reasonable, as we knew that owing to the panic everything was tied up here and things were improving.

Q. When you left Mr. Smith, as I understand you, you spoke to Mr. Howard on the subject matter of the affairs of the Northwestern Portland Cement Company? A. When I left Mr. Smith?

Q. After you left Mr. Sidney Smith's office?

A. To the best of my recollection, both Mr. Smith and myself went over to Mr. Howard's office together.
[172—49]

Q. And did you continue the discussion there as to the affairs of the Northwestern Company?

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A. Well, Mr. George Spencer was called in, and, as I say, the whole four of us discussed the thing informally. We discussed as to who was to approach—interview Mr. Dingee to get definite—to get some information.

Q. Was any reference made to the purpose for which Mr. Dingee was to be approached,—the reason why he should be approached at all?

A. Well, as President of the company to get an explanation as to when they were going on with the works. The fact of the cessation of work at the plant was discussed, and also the lending of this money by Mr. Dingee to these other corporations was discussed. Well, really, I forget what other subject matter was discussed in the conversation with Mr. Howard when Mr. Sidney Smith was present. As to whether any reference was made to the Wenzelburger report, well, of course, we had all seen the Wenzelburger report, and I do not think that any reference was made; of course, we knew the contents of his report, we took those facts for granted. The disposition of these funds by Mr. Dingee was referred to. Beyond what I have already stated, I do not recollect anything else that was said in that conversation. I cannot recollect whether the subject matter of any sort of settlement of our claims was discussed in this conversation.

Q. There is one other matter I would like to call your attention to, and I hope you will correct me if I am in error, Mr. Evans. I understood you to say that you thought there might be some further correspondence bearing upon the matters what we have

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been discussing yesterday and to-day. I think I can state it from memory, without taking the time to look it up. If I am not in error you stated yesterday that you thought there [173—50] might be some further correspondence, or that there was some further correspondence,—I am not sure about the exact verb, relating to these matters which are under discussion here, in Vancouver; that it might have been turned over by the old partnership to the new corporation. Later on in your testimony I understood you to say further, when speaking of the gap between the 7th of January and the 28th of March, 1908, that there was some further correspondence. And later on, I understood you to say that there was no further correspondence. Now, I would like to have that cleared up. I would like to know definitely whether there is or is not, any further correspondence.

A. No. When I referred to these letters it stopped; and, if you recollect, I went over this letter again, and there was a good reason why it should stop, because Mr. Howard visited me then and I feel practically sure that there was nothing passed,—nothing passed after that until I went down to San Francisco; and I feel this way, Mr. Dunne, that Mr. Howard—now, whether I instructed Mr. Wenzelburger or not, direct, I don't know; I don't recollect. I may have indorsed a certificate and sent it down to the Western Fuel Company, telling them to instruct Mr. Wenzelburger. All I know is I am practically sure I paid his fees, and then afterwards the other people interested in the suit paid pro rata pro-

(Deposition of Ernest E. Evans.)

portion; they pro-rated it up. There is no other correspondence that I know of, anywhere, whether in San Francisco or in Vancouver, which would throw any light upon the transaction which we are discussing here. I don't think so, because everything relevant—anything that had anything to do with the thing I have had copies made, and those copies compose this file I have here. The reason I say “extract from Mr. Howard's letter”—of course, you will understand that our business transactions were not exclusively in connection with this—that I am interested in several other things in which Mr. [174—51] Howard is interested. Now, for instance, we being so closely associated with the Western Fuel Company's properties for over twenty years, of course, he writes us a good deal, and we knowing what happened in the past, have better information than he has.

I gave the address of Mr. E. H. Warner incorrectly. I got confused between W. P. and E. H.; but I am almost sure that the E. H. is at Quornhall.

Q. I notice, Mr. Evans, on page 22 of your testimony of yesterday, the following question and answer: “Q. These papers really represent extracts from the correspondence? A. Well, the whole letters. Q. And the various letters and documents from which the extracts are made here are in your possession, are they not? A. They are in the possession of Evans, Coleman and Evans. Q. At Vancouver? A. At Vancouver.”

Mr. OLNEY.—In the possession of Evans, Cole-

(Deposition of Ernest E. Evans.)

man and Evans, Limited is what he said.

Mr. DUNNE.—No, he says Evans, Coleman and Evans, later on, at lines 15 and 16: “Q. In whose possession are these papers? A. They are in the possession of Evans, Coleman and Evans, Limited.”

WITNESS.—Of course, they belong to the old firm; they are all stored. They are available. Of course, what has happened since I left I do not know; they may have a general clear out. You amass such a tremendous mass of this stuff, and of course they might say anything two years old let's destroy it. When I wrote a letter I preserved carbon copies of it. We have a system, a carbon taken, and the original is also copied in a book. You see, we have several partners and all these carbons are distributed around, and we all read each other's letters. The originals of these various letters are available in Vancouver; they should be.

Mr. DUNNE.—Then, we will call on you, Mr. Olney, for the [175—52] production of the originals of these various letters and documents referred to in the testimony of the witness.

Mr. OLNEY.—What is the object?

WITNESS.—I am not going to be there, but I can write up to a Mr. Russell there, he is now the managing director, to tell the girl to get all these things together.

Mr. DUNNE.—I should not suppose it would be a very difficult matter.

WITNESS.—Oh, no, I do not think so, I should not think so.

(Deposition of Ernest E. Evans.)

Mr. OLNEY.—Mr. Dunne this statement he testifies was made out long ago, and I don't think there is any question about its accuracy.

Mr. DUNNE.—He says: "Q. When did you have these extracts made, Mr. Evans?

"A. I should think probably about twenty months ago."

Mr. OLNEY.—They were made up for his information, and not in response to any advices down here at all, so I don't think there is any question about their accuracy.

WITNESS.—I have nothing to disguise. I was dissatisfied; could not get any information; and Mr. Robert Bruce is a very dear old friend of mine, and I had every copy of the letters bearing on the subject made out before I went to England. I left for England about the 17th of December. I left Vancouver about the 17th of December, two years ago,—in 1908. I had all these copies of these things made out and sent down to Mr. Robert Bruce. That is the way I can fix the date. Of course, the correspondence has been overhauled so often, it might not be intact, you know. I have the same stenographer. She has been with me for over four years. She may have filed some of these letters under the Western Fuel Company file. We are the local agents for the Western Fuel Company. [176—53]

I wrote two letters to Mr. Dingee to neither of which did I receive any answer. I did not write any other letter to Mr. Dingee,—to the best of my recollection, no. I cannot see what I could have written

(Deposition of Ernest E. Evans.)

to him about. My brother saw Mr. Dingee in 1905. Mr. Dingee, in 1905, was after this property that we were jointly interested in with Balfour-Guthrie. This Balfour-Guthrie property was entirely different from the property subsequently acquired by the Northwestern. It is a distinct and disconnected property; one is opposite the other; it is a valley. The mountains go up this way and that way (indicating); Balfour's is on one side and this is on the other side. My brother came down here to interview Mr. Dingee with Mr. Howard. Mr. Dingee wanted to buy the Balfour property in 1905.

Q. You were the active member of your firm in all these cement dealings?

A. Well, my brother and I but at that time Mr. Howard wanted one of us to come down to see Mr. Dingee.

Q. But, subsequently, I mean—during the transactions which we have been discussing here.

A. Oh, this is just a year before the earthquake, you see.

Q. What I want to get at is this: during the transaction which we have been discussing here, and which are involved in this suit, I ask you if you were the active member of your firm?

A. Yes, that is right. I transacted all the business. My brother Percy only came down here in 1905 and made Mr. Dingee the offer on this Balfour property.

I feel positive no other letters were sent to Mr. Dingee from my office aside from the two I have referred to, relating to the affairs of the Northwestern

(Deposition of Ernest E. Evans.)

Portland Cement Company. As I told you, I never met Mr. Dingee. But my brother [177—54] met him in 1905 and Mr. Dingee was not as polite as he could have been, and my brother just simply gave him back the change. Mr. Dingee asked for an offer of this Balfour-Guthrie property, and my brother made him what we considered a very reasonable offer. That shows Mr. Dingee was in the field a long time. This Balfour-Guthrie property was cement property also.

WITNESS.—Now, do you want these letters, or not?

Mr. DUNNE.—For the reporter's sake, I think they should be left so that he may copy them. (Reporter stated that the copying of the letters into the record had been completed.)

WITNESS.—I have the majority of the copies but I can send these copies back to Vancouver and tell the girl to make a thorough search and get all the correspondence bearing on the subject, and send down to Mr. Olney, and then he can pick it out. Is that what you wanted?

Mr. OLNEY.—Yes.

And be it further remembered that here the direct examination of said Ernest E. Evans as given upon the taking of said deposition ended; and that thereupon the following motion to strike out was made:

Mr. DUNNE.—The Standard Portland Cement Corporation, and, to make it entirely clear, all parties represented by Morrision & Brobeck, or Morrision & Brobeck and J. J. Dunne, moved to strike

(Deposition of Ernest E. Evans.)

out all of the testimony of the witness relative to values, and particularly to the value of any estate or assets of the Northwestern Portland Cement Company, on the ground that the same is incompetent, immaterial and irrelevant, without foundation, it not appearing that the witness knew either the intrinsic value of the alleged assets or the market value thereof; and upon the ground that the answer as given was not responsive to the question asked.

The MASTER.—The motion to strike out is denied. [178—55]

Mr. DUNNE.—We take an exception.

And be it further remembered that thereupon the cross-examination of said Ernest E. Evans, as given upon the taking of his said deposition was read, the following occurring:

Mr. OLNEY.—I will read his cross-examination. The cross-examination commences at page 103, and the first question is: “Q. Mr. Evans, at the time of the sale of the bonds and stocks of the Northwestern Company to the Standard Portland Cement Corporation, had you considered in your own mind the value of the assets of the Northwestern Cement Company?”

Mr. DUNNE.—We object to that question upon the ground stated in the deposition, namely: that the question and the evidence sought to be elicited thereby are incompetent, immaterial and irrelevant, and not pertinent to any issue in the case, and assuming a fact as to which there is no evidence, to wit, that there was any sale to the Portland Cement Cor-

(Deposition of Ernest E. Evans.)

poration. We respectfully insist that a man's mental processes are not evidence. Evidence consists of things that are said and things that are done, but the uncommunicated or secret mental processes of an individual are not competent evidence under any system of evidence. The Standard Portland Cement Corporation cannot be bound by any consideration Mr. Evans might have had in his own mind, uncommunicated to that corporation, or to some one of its officers. The evidence is inherently incompetent. This is not the development of a real value, but merely the private mental picture of an individual concerning that value.

The MASTER.—I will overrule the objection.

Mr. DUNNE.—We note an exception.

“A. Yes.

Q. What figure, if any, did you put upon those assets?”

Mr. DUNNE.—The same objection last hereinabove made, together with the additional objection that his mental condition, [179—56] or mental processes, beliefs or private opinions, uncommunicated, are immaterial to any issue in this cause, and do not constitute any fact or facts by which any of the parties represented by us could be bound, or should be bound. You are asking him here what figure he put on those assets; of course, we contend, among other things, that he is utterly incompetent to put any figure on those assets; he has not the knowledge; he has not the familiarity.

(Deposition of Ernest E. Evans.)

Mr. OLNEY.—He had the Wenzelburger report before him.

Mr. DUNNE.—Yes, but that is piling hearsay upon hearsay.

The MASTER.—I will take the matter under advisement and look into the authorities and decide the matter to-morrow morning.

Mr. OLNEY.—I suppose I might as well read the rest of the deposition so as to get along.

The MASTER.—Very well.

Mr. OLNEY.—(Reading:) “A. Well, I considered that they were worth between \$240,000.00 and \$250,000.00, that is, if the Company were liquidated.”

Mr. DUNNE.—I move to strike that answer out upon all the grounds stated in the objections last hereinbefore made, and upon the further ground that it is purely a speculative answer. He does not attempt to state a fact there, but he attempts to state something which might be if something else happened. It is a mere argument, a mere piece of speculation on his part.

The MASTER.—The ruling will be reserved on that also.

Mr. OLNEY.—(Reading:) “Q. By ‘liquidated’ you mean—

A. That is to say, if the company went into liquidation and the assets were sold, they should realize between \$240,000.00 and \$250,000.00 but as a going concern I considered that it was worth par easily because the money which was actually spent [180—57] in construction would have had to be

(Deposition of Ernest E. Evans.)

spent anyhow.”

Mr. DUNNE.—We renew the motion to strike out all of that answer relating to the alleged value of the concern as a going concern being par, upon all the grounds stated in the objections, and upon the further ground that the answer is not responsive to the question; and, moreover, here again we find this witness speculating as to possibilities—not even probabilities but possibilities; this is not an answer stating a fact, it is an argument.

The MASTER.—I will reserve the ruling upon that, and rule upon it later.

Mr. DUNNE.—Will you stipulate that these objections may run all through to this line?

Mr. OLNEY.—The stipulation covers the whole thing, Mr. Dunne.

Mr. DUNNE.—All right.

Mr. OLNEY.—The stipulation in the deposition covers these objections.

Mr. DUNNE.—Very well; but not the motions to strike out?

Mr. OLNEY.—No, not the motions to strike out.

Mr. DUNNE.—We will have to press them.

Mr. OLNEY.—Now, the next question is: “Considering the concern as a going concern, or as a concern the owners of which contemplated going ahead with it, would you have put a different figure upon the assets? A. Certainly, the going ahead with it; I would consider it fully worth par.”

Mr. BROBECK.—Will it be necessary now to renew the objection?

(Deposition of Ernest E. Evans.)

Mr. DUNNE.—No, not the objection nor the motion to strike out.

Mr. OLNEY.—That is right. [181—58]

The MASTER.—No, it will not be necessary to repeat the objection.

Mr. DUNNE.—We will ask your Honor to take that under advisement too. We claim on our side that it is open to all the vices which have been alleged against the other answers. I would like to add to the motion to strike out this last answer the ground that the question is in the disjunctive, and also the ground that it really involves two questions, and the further ground that it is not proper cross-examination.

The MASTER.—Very well, that will be taken under advisement.

Mr. OLNEY.—The next question is: “Q. At the time referred to on the sale of your stocks and bonds to the Standard Portland Cement Corporation, did you have any information as to the plans of Mr. Dingee, or Mr. Bachman, for going ahead, or not going ahead with the Northwestern Cement Company? A. Yes: I distinctly understood all along that they were going ahead with this, only they had stopped it, owing to the financial panic until things settled down again, and at the time that I met Dr. Bachman when he went to examine the property of course we spent the evening together, and he distinctly stated this Northwestern Portland Cement Company was to be eventually amalgamated to the Santa Cruz and the Standard Portland Cement Corporation.”

(Deposition of Ernest E. Evans.)

Mr. DUNNE.—I move to strike out this answer upon the *the* grounds heretofore stated, and because incompetent, immaterial and irrelevant, not responsive, involving hearsay, *ex parte* declarations of persons by whose statements none of these parties represented by us could be bound or should be bound, and not proper cross-examination. In this connection I suggest to your Honor the propriety of taking this motion to strike out under advisement.

The MASTER.—Very well. [182—59]

Mr. OLNEY.—The next question is: “Q. What interest, if any did you understand the Standard Portland Cement Company had with the Northwestern Cement Company? A. Well, the idea of starting the Northwestern Company was strategic, and with the idea of protecting the other factors.”

Mr. DUNNE.—I move to strike out the answer upon the grounds last hereinabove stated. I suppose it will be taken under advisement also.

The MASTER.—Very well.

Mr. OLNEY.—Q. What interest, if any, would the Standard Portland Cement Company have in purchasing bonds of the Northwestern Cement Company?

A. Well, they considered at that time it was very vital, very important, for the protection of the Standard and also the Santa Cruz, that they should have a plant in the north in the Puget Sound Country.

Mr. DUNNE.—I move to strike out the answer on all the grounds heretofore stated, and further on the grounds that the question is intended to develop, and

(Deposition of Ernest E. Evans.)

does develop nothing more than the conjecture or opinion of the witness, his mere conclusion, and that is not evidence by which any of these parties can be bound.

Mr. OLNEY.—Q. From what did you derive your information upon that point? A. From whom?

Q. From whom, yes.

A. I originally heard that, of course, in 1905, and I got confirmation of it from Dr. Bachman at the time that he was examining the property at Kendall and at Vancouver.

Mr. DUNNE.—I move to strike out the last answer upon all the grounds heretofore stated.

Mr. OLNEY.—Q. What statements did Dr. Bachman make to you at this time?

A. He stated that it was of utmost importance that they should go right ahead with these works and rush them to completion.

Mr. DUNNE.—The same motion to strike out.
[183—60]

Mr. OLNEY.—Q. You have testified, Mr. Evans, that all of the certificates of stock which you sent down to Mr. Howard to be turned over, in pursuance of the settlement made with Mr. Dingee through Mr. Howard, were sent down by you endorsed in blank?

A. That is right, yes.

Q. Did you understand at that time that some of these certificates were to be turned over to Mr. Dingee and others to the Standard Portland Cement Corporation?

A. They were to be handed over to the Standard

(Deposition of Ernest E. Evans.)

Portland Cement Corporation in exchange for their notes, which were subsequently to be endorsed by Mr. Dingee; and, mind you, I made no stipulation when I agreed to this proposition, that Mr. Bachman was to endorse. I considered that with Mr. Dingee's endorsement, it was sufficient.

Mr. DUNNE.—I move to strike out the answer upon all the grounds which have heretofore during the cross-examination of this witness, been stated, and upon the further ground that the evidence develops merely his conclusion.

The WITNESS.—I might just as well have sent them to a banker, as not, only, of course, having absolute confidence in the Western Fuel Company, I sent the securities to them to turn over to the Standard Portland Cement Corporation.

Mr. DUNNE.—Same motion.

Mr. OLNEY.—Your understanding was that all the certificates were to be turned over to the Standard Portland Cement Corporation?

A. Yes, sir, in exchange for these notes.

Mr. DUNNE.—Same motion to strike out.

Mr. OLNEY.—Q. And there was no distinction made between the stock which you have received as promotion stock, or commission, as it were, and the stock which you received as a bonus on the purchase of the bonds? A. None whatsoever.

Mr. DUNNE.—Same motion to strike out, on all the grounds heretofore stated. [184—60a]

Mr. BROBECK.—Does that conclude your cross-examination of Mr. Evans?

(Testimony of Ernest E. Evans.)

Mr. OLNEY.—That concludes our cross-examination of Mr. Evans.

Mr. DUNNE.—Mr. Evans, will you take the stand?

[Testimony of Ernest E. Evans, for Complainant.]

Thereupon said ERNEST E. EVANS took the stand as a witness, and after having been first duly sworn, testified as follows:

Mr. DUNNE.—Q. Mr. Evans how many visits in all did you make to Kendall, Whatcom County, Washington?

Mr. OLNEY.—We object to that if your Honor please, on the ground that it is a matter before gone into.

The MASTER.—The objection is sustained.

WITNESS.—A. I could not tell you.

Mr. DUNNE.—You need not answer Mr. Evans.

Mr. BROBECK.—We are entitled to an answer anyhow, aren't we?

The MASTER.—Not according to the order of reference.

Mr. DUNNE.—Will you read the question Mr. Reporter? (Question read by the Reporter.) I press the question. **[185—60b]**

The MASTER.—Reasonable repetition I would have no objection to, but I cannot be sitting longer than is necessary. Some action must be taken against the possible repetition of the matter we have been listening to now for nearly two days.

Mr. DUNNE.—Yes, sir. I simply want to direct his attention to a certain subject matter. Do you press your objection Mr. Olney?

Testimony of Ernest E. Evans.)

Mr. OLNEY.—Yes, we stand on the objection.

Mr. DUNNE.—And your Honor sustains the objection to which we really take an exception?

The MASTER.—Yes.

Mr. BROBECK.—In this connection we will also move that the witness be permitted to answer notwithstanding the view of the Master as to the admissibility of the answer, for the purpose of enabling the Circuit Court to review the matter under the order of reference.

The MASTER.—The motion is denied.

Mr. DUNNE.—We note an exception.

Q. Will you state the area of the holdings at Kendall, if you can, the holdings of the Northwestern Company?

A. I cannot state exactly, but to the best of my belief and knowledge about between 640 and 1000 acres; roughly, I should think that about 320 acres of that area was lime deposit land. I should judge that about one-third of the total area was lime deposit land. I don't know for certain. The Balfour-Guthrie lands were directly opposite Kendall, on the other side of the valley. As to the distance between them, I should think that the flat of the valley was probably from one-half to three-quarters of a mile. There are precipitious mountains, you understand, and the flat was about three-quarters of a mile wide with a railway in between. I should say that the distance of the Kendall lands of the Northwestern Company from the Balfour-Guthrie [186—61] property was between a half a mile and three-quar-

(Testimony of Ernest E. Evans.)

ters of a mile. It was a continuation of the ridge.

I have not the least idea as to what was the intrinsic value of the lands at Kendall for agricultural purposes. I should think the flat land that the Northwestern Company owned, for agricultural purposes, was worth between \$15,000.00 and \$20,000.00. I have never myself operated agricultural land: I have been a commission merchant only all my life. I was interested in a ranch once, but aside from that I have had no personal experience with agricultural land. Aside from the lime deposit there, that land had upon it the natural timber that was there when the place was located. These lime deposits were not on what I call the flat of the valley, the exposure that we saw first was on the hill about 250 or 300 feet up. There were exposures further down, and higher yet. I should estimate that the first lime exposure was between 250 and 300 feet high above the level land; as you went up the hill and met the first lime deposit it would be between 250 and 300 feet high.

I received a coupon interest out of the Northwestern Portland Cement Company, but aside from that I did not receive any other dividend. I could not recollect how many coupons were paid me. I do not know that any sinking fund was established by the Northwestern Portland Cement Company. All I know is Mr. Wenzelburger's report, apart from that one.

Q. In the course of your testimony you refer to certain other cement companies which had got their

(Testimony of Ernest E. Evans.)

factories started during these delays which have been referred to in the deposition. Now I ask you if those companies were established on or before May 1st, 1908.

A. To the best of my recollection, the Washington Portland Cement Company was being operated then. The Superior plant had not yet been completed. I could not tell you how near completion [187—62] the Superior Portland Cement Company's plant was at that time. I was never there, and all the information I got was from hearsay. Except these two, prior to May, 1908, there was no other cement plant being constructed in the State of Washington.

Q. It was a matter of business importance, was it not, to the Northwestern Company to get its plant in operation before these rival companies got started?

A. There would have been considerable advantage in having the plant started before the others.

In the course of my deposition I referred to a couple of donkey engines, but I have never seen them. I never had any stock in the Bellingham Bay and British Columbia Railway.

And be it further remembered that thereupon JOHN L. HOWARD was called as a witness on behalf of said Standard Portland Cement Corporation, and that after having been first duly sworn he testified as follows, to wit:

**[Testimony of John L. Howard, for Standard
Portland Cement Corporation.]**

Direct Examination.

My name is John L. Howard. I am sixty-one years of age; and I am a merchant by occupation. I have been engaged in business in San Francisco for about thirty years; chiefly in the coal line, latterly in building materials also. I have had business connections in Vancouver and British Columbia. I began there in 1903. The Western Fuel Company, of which I am President, has mines at Nanaimo, and the firm of Evans, Coleman & Evans were our local agents for the sale of that coal in the city of Vancouver. Mr. Ernest E. Evans, who was just upon the witness-stand, is a member of the firm of Evans, Coleman and Evans, as it then was. During my business experience in San Francisco, I have always been interested in corporate enterprises and have maintained a knowledge of the details of the various corporate enterprises I was interested in. These interests of mine in the [188—63] north, in the Puget Sound country, took me north, as a rule, about four or five times a year, and sometimes six. I have finished the forty-first trip since the beginning of 1903; and on these trips I generally visited Portland, Seattle, Victoria, Nanaimo and sometimes Vancouver. In the course of my business life, I tried to keep myself abreast of the business world and informed of what was going on therein in the country where I was interested. The Western Fuel Company carries on a coal business. Beginning with 1903, it

(Testimony of John L. Howard.)

began to handle, among other things, cement. I was the President of that Company. As to the relationship of that company and the Western Building Material Company, in 1906 we separated the building material department from the coal and coke business of the Western Fuel Company for convenience in operating our business and accounts. The Western Building Material Company was organized and entirely owned by the Western Fuel Company, and it kept a separate organization and a separate system of accounts. It was an independent corporation, but all the stock was owned by the Western Fuel Company. I was President of the Western Building Material Company, and I am still. Mr. Ernest E. Evans is a shareholder in the Western Fuel Company.

As to the relations between the Western Fuel Company or the Western Building Material Company and the Standard Portland Cement Company, in 1903 the Western Fuel Company was one of three selling agents for the Standard Portland Cement Company. In 1904, the Western Fuel Company became the sole selling agent for the Standard Portland Cement Company, under a five year contract. In 1906, when the Santa Cruz Company was nearing completion, a contract was made with it, and a new contract was made with the Standard Company. They ran contemporaneously for five years. In 1906, after the contracts with both companies had been made with the Western Fuel Company, those contracts were assigned to the Western Building

(Testimony of John L. Howard.)

Material Company with the consent [189—64] of the two cement companies. The meaning of the phrase, "sales agent," as used in connection with this business, was that we were to handle the product of the cement companies, using due diligence in the marketing of the goods. It was presumed to be exclusive, but there was a clause in each contract under which the cement companies might sell for their own account, but if they did they would account to us for those sales which were made individually. Aside from that qualification, I was the exclusive sales agent.

Q. Have you those contracts here?

A. I don't know whether the secretary brought them or not.

Q. I exhibit to you a paper marked on the back, "Contract with Standard Portland Cement Co." It is further marked on the back "Exhibit B, R. B. T., N. P." I ask you to look at that paper and state whether you can identify it; and when I say "that paper," I mean all the instruments which are there bound together.

A. I identify the contract as having been signed by me on behalf of the Western Fuel Company. I identify all these papers.

Q. I exhibit to you also a paper marked on the back, "Standard Portland Cement Co. Exhibit A, R. B. T., N. P.," and ask you if you can identify that document.

A. I identify the contract between the Standard Portland Cement Co. and the Western Fuel Co. I

(Testimony of John L. Howard.)

identify the papers.

Q. I also exhibit to you a document marked, "Contract with Santa Cruz Portland Cement Co. Exhibit C, R. B. T., N. P.," and ask you if you can identify that. A. Yes, sir.

Mr. DUNNE.—I offer in evidence the document marked [190—65] on the back, "Standard Portland Cement Co. Exhibit A, R. B. T., N. P.," just identified by the witness, together with its attached papers, and ask that it be read in evidence into the Reporter's notes as an exhibit on behalf of the complainant, and will be "Complainant's Exhibit No. 1."

Thereupon said exhibit was received and read in evidence in this cause, and is in the words and figures as follows, to wit:

[Complainant's Exhibit No. 1.]

"August 7, 1903.

Messrs. Standard Portland Cement Co.

Crocker Building,

City.

Dear Sirs:

Referring to the conversation had by the writer with Mr. Dingee regarding the contract between you and this Company:

The contract is silent as to the date of its operation, but we understand it to be January 1st, 1904, unless some satisfactory arrangement may meanwhile be made with the E. B. & A. L. Stone Company and the Henry Cowell Company, under which the contract may become operative at an earlier date.

As to paragraph 4, 5 and 6—

We understand that our sales returns are to net you \$1.60 for bulk Cement at factory.

This Company has been jobbers of Cement at Oakland where it has a warehouse, also at San Francisco where it proposes to increase its warehouse facilities.

We take it that it is a matter of indifference to you whether the Cement be sold at wholesale in San Francisco and Oakland to John Smith, to John Jones or to the Western Fuel Co. for jobbing purposes.

With your knowledge and consent we propose continuing the jobbing business, but buying only for our own account such Cement as cannot be sold for direct delivery from cars and that must be carried for delivery from warehouse for small orders and [191—66] for sudden calls.

It is understood, of course, that this is to be carried on in good faith and under the spirit of our contract, and that sales which might be made for direct delivery are not to be manipulated to pass through the warehouse.

The warehouse accounts will always be kept distinct from those of other sale, and will be open to examination at any time.

Have you any objection to this?

Yours very truly,

Pres'dt.

234 *Standard Portland Cement Corporation*

William G. Henshaw, William J. Dingee, Irving A. Bachman, Frank A. Losch,
President. Vice-President. Manager. Secretary.

STANDARD PORTLAND CEMENT COMPANY.

Telephone: Private Exchange 302.

Office: 30-34 Crocker Building.

(STANDARD
office
30-34 Crocker Building.
PORTLAND CEMENT
Works:
Napa Junction
Cal.
COMPANY.)

San Francisco, California, Dec. 5, 1903.

The Western Fuel Company,
San Francisco, California.

Gentlemen:—

Upon August 3rd, 1903, we delivered to you the proposed form of a contract between your Company and ourselves, which was to take effect conditionally, upon January 1st, 1904.

We now advise you that as the conditions upon which only this proposed contract was to take effect, have not been fulfilled, we hereby and herewith withdraw absolutely our offer concerning the same, and the said proposed contract is hereby absolutely annulled and cancelled.

It may be proper to add that our determination as to the cancellation and annulment of this contract is irrevocable.

In the hope that this will not interfere with the cordial business [192—66a] relations which have heretofore existed between your Company and our

own, we beg leave to sign ourselves,

Yours very truly,

STANDARD PORTLAND CEMENT COM-
PANY.

By WILLIAM J. DINGEE,
Vice-President.

Attest: FRANK A. LOSH.

Secretary.

(Standard Portland Cement Company, San Fran-
cisco, Cal. Incorporated. Jan. 27, 1902.)

STANDARD PORTLAND CEMENT COMPANY.

Office

Room 45 Second Floor, Mills Bldg.
San Francisco, Cal.

Works:

Napa Junction, Cal.

Removed to 3rd Floor, Crocker Building.

San Francisco Cal. Mar. 20, 1903.

Western Fuel Co.,
City.

Gentlemen:

Referring to the contract between this company and yourselves concerning the sale of our cement, we beg to say that while this contract calls for the sale by you of no other domestic cement than ours, you are hereby given the privilege, wherever you find it necessary to hold trade, to handle any cement you think proper until such date as we notify you that we are ready to make shipment of our production. You will understand that this permission is not intended to allow the making of long term contracts

for other domestic cements, but only to permit of sales for immediate delivery except upon consultation with us. We will be able by the 25th of this month to notify you of the approximate date when we will be ready to make shipments.

Some questions having arisen of the return of sacks to us [193—66b] prepaid, we beg to say that our interpretation of the contract permits you to charge this return freight to the purchaser, as being included in the net price plus transportation, etc.

We beg to enclose resolution authorizing the execution of the contract with yourselves and also a copy of freight rates to various points, quoted us by the Southern Pacific Co.

Yours truly,

STANDARD PORTLAND CEMENT CO.

By C. E. HAYES.

RESOLVED, that the President and Secretary of this Company be and they are hereby authorized and empowered to enter into such contracts and agreements for the sale of the cement produced by this company as in their judgment may seem to the best interest of the company, and

FURTHER RESOLVED, that this Board does hereby ratify, approve and confirm the action of the President and Secretary in executing contracts for the sale of cement in behalf of this company with E. B. & A. L. Stone Company, dated February 27th, 1903; with Western Fuel Co. dated March 14th, 1903; and with Henry Cowell Lime and Cement Co. dated March 19, 1903."

I, Frank A. Losh, Secretary of the Standard Portland Cement Co. hereby certify the foregoing to be a full, true and correct copy of a resolution unanimously adopted at the regular monthly meeting of the Board of Directors of said Standard Portland Cement Co. held March 19, 1903;

IN WITNESS WHEREOF I have hereunto signed my name and affixed the corporate seal of the STANDARD PORTLAND CEMENT COMPANY this twenty-first day of March, Nineteen Hundred and Three.

FRANK A. LOSH.

Secretary.

(Standard Portland Cement Company. San Francisco, Cal. Incorporated. Jan. 27, 1902.)

[194—66c]

The following rates are quoted on cement in carloads, cars loaded to capacity but not less than 15 tons, from Napa Junction to points named below. Rates are in cents per ton of 2000 lbs.

To San Francisco..	75
“ Oakland Long Wharf.....	75
“ Sacramento....	125
“ Marysville....	200
“ San Jose.....	125
“ Gilroy	310
“ Salinas..	450
“ San Luis Obispo.....	465
“ Stockton..	115
“ Fresno.....	405
“ Tulare...	500
“ Bakersfield..	500
“ Los Angeles.....	400

In addition to these rates there will be a switching charge from our works to Napa Junction, at \$1.50 per car.

The regular rate to Los Angeles is \$4.00 per ton but we have a rate of \$3.25 on one special shipment to that point.

William G. Henshaw,	William J. Dingee,	Irving A. Bachman,	Frank A. Losh,
President.	Vice-President.	Manager.	Secretary.

STANDARD PORTLAND CEMENT COMPANY.

Telephone: Private Exchange 302.

Office: 30-34 Crocker Building.

(STANDARD

Office:

30-34 Crocker Building,

San Francisco.

PORTLAND CEMENT

Works:

Napa Junction,

Cal.

COMPANY.)

San Francisco, California Sept. 5, 1903.

Cir. Letter No. 6

The Western Fuel Company,

San Francisco, Calif.

Gentlemen:

We are compelled to notify you that the Standard Portland Cement Co. has already at this writing received orders for cement far in excess of the capacity of the company for production during the remainder of the year 1903, and it will be impossible for it to supply the cement for the orders received at this date in full during the remainder of the year, but it will have to fill said orders [195-66d] pro

rata as provided for in its contract with you.

Yours truly

STANDARD PORTLAND CEMENT CO.

By WM. G. HENSHAW,

Pres.

THIS AGREEMENT, made and entered into this Fourteenth day of March, 1903, by and between the STANDARD PORTLAND CEMENT COMPANY, a corporation, the party of the first part, and WESTERN FUEL COMPANY, a corporation, the party of the second part;

WITNESSETH:—That for and in consideration of the mutual conditions and covenants herein expressed, the party of the first part agrees to sell during the period of time terminating upon the Thirty-first (31st) day of December, 1903, to the party of the second part, the best quality of Portland cement manufactured by the party of the first part, free on board the cars at its factory in Napa County, at the price of One Dollar and Fifty cents (\$1.50) per barrel of not less than Three Hundred and Eighty pounds net weight. If the cement be ordered in barrels, to this price shall be added Fifty (50¢) cents for each barrel, with no rebate for the return of the empty barrels. If the cement be ordered in bags, the sum of Forty (40¢) cents additional will be charged per barrel, which Forty (40¢) cents will be rebated and repaid to the purchaser within Thirty (30) days after the return of the bags in serviceable condition at the rate of Ten (10¢) cents for each bag so returned with freight prepaid to the said factory.

IT IS mutually agreed that should the aggregate orders received exceed the producing capacity of the said factory, which producing capacity is estimated to be Sixteen Hundred (1600) barrels per day, the party of the first part reserves the right to fill said orders pro rate during said period of excess.

The prices for cement sold, by the party of the first part [196—66e] to other than jobbers, who have entered into the same contract and agreement with the party of the first part as is herein set forth, shall be One Dollar and Sixty-five cents (\$1.65) per barrel (with the same additional charges for packages as above set forth) for orders of not less than One Thousand (1000) barrels, and One Dollar and Seventy-five cents (\$1.75) per barrel (with the same additional charges for packages as above set forth) for orders of not less than one (1) carload and it is further agreed that said party of the first part shall not sell in lots of less than one (1) carload.

The party of the second part agrees to handle or sell no other cement of domestic manufacture than that of the party of the first part, and further agrees that its selling price in lots of One Thousand (1000) barrels, or over, shall be One Dollar and Sixty (\$1.60) cents per barrel, with cost of packages and transportation added thereto, and One Dollar and Seventy (\$1.70) cents per barrel, with like addition for cost of packages and transportation, in carload lots.

It is mutually agreed that the party of the first part shall have the right Twenty-four (24) hours after written notice has been mailed in the San

San Francisco Post Office to the address of the party of the second part, to advance or reduce the selling price of its cement, and the party of the first part agrees that in case of advance or reduction in price to the party of the second part, the same advance or reduction shall be made in price to all jobbers who have, with the party of the first part, entered into a like contract with this; and the party of the first part further agrees that a relative and proportionate increase or decrease shall be preserved in all sales of cement made by the party of the first part to other users, as above set forth; it being always agreed by the party of the first part that no purchaser or consumer of its cement shall be allowed to procure the same from the party of the [197—66f] first part upon more favorable terms than are herein accorded to the party of the second part. By the party of the second part it is agreed that in case of an advance or reduction in the price of the cement manufactured by the party of the first part, it will sell such cement at the figures netting it the same profit per barrel as it will receive from the price above agreed on.

It is agreed, however, by the party of the first part, that in case of a reduction in price as above provided, said party of the first part will refund to said party of the second part, the amount of said reduction for all cement purchased from the party of the first part, then remaining in the hands of the party of the second part on the date of said reduction and which said cement has not been sold or contracted

to be sold by said party of the second part on or before said date of reduction.

It is mutually agreed that should the party of the first part deem it expedient to quote a special price to meet any competition or transportation upon any specially contemplated order or at any distant point it shall have the privilege of so doing twenty-four (24) hours after notifying in writing as above all of the jobbers who have with the party of the first part entered into a like contract with this and it is further agreed that said special price shall only apply to the particular order or location for which it is quoted, and shall not otherwise affect the conditions of this contract.

The party of the first part reserves the right to make such terms, conditions and agreements as it may deem fit for the sale of its production for the purpose of exportation to foreign countries.

The party of the second part agrees that upon receiving notice from the party of the first part that any cement which it may order is free on board the cars, it will forthwith transmit to the party of the first part, at its general office in the City of San [198—66g] Francisco, a promissory note for the full purchase price, duly executed by the party of the second part, without interest, and payable upon the first collection day, after fifteen days after the date of notification, or in case said promissory note is not so transmitted to the party of the first part, said party of the second part agrees to pay the full purchase price for the cement referred to in said

notification in net cash upon the first collection day succeeding the date of said notification.

IN WITNESS WHEREOF, the party of the first part, by its President and Secretary, duly authorized thereto, has caused its corporate name to be affixed, and its corporate seal to be attached hereto; and the party of the second part has in like manner, and under like authorization of its Board of Directors, caused its corporate name to be signed hereto by its President and Secretary, duly attested by the seal of the corporation.

Executed in duplicate the day and year first above written.

STANDARD PORTLAND CEMENT COMPANY.

WILLIAM J. DINGEE,

Vice-Pres.

FRANK A. LOSH,

Secretary.

(Standard Portland Cement Company, San Francisco, Cal. Incorporated Jan. 27, 1902.)

WESTERN FUEL CO.,

JOHN S. HOWARD, Pr."

Mr. DUNNE.—I next offer in evidence the document marked on the back, "Contract with Standard Portland Cement Co., Exhibit B, R. B. T., N. P.," to wit, the contract and its attached papers. I offer that in evidence on behalf of the complainant, to be transcribed into the Reporter's notes, and it will be known as "Complainant's Exhibit No. 2."

Thereupon said exhibit was received, and read in evidence in this cause, and is in words and figures, as follows, to wit: [199—66h]

[Complainant's Exhibit No. 2.]

“For value received the Western Fuel Company hereby sells, assigns, transfers, and sets over unto the Western Building Material Company the foregoing contract and all its rights thereunder, subject to the condition, however, that the Standard Portland Cement Company shall have the right to terminate said contract at its option in the event that John L. Howard shall at any time or for any reason cease to be the chief executive officer of the Western Building Material Company.

WESTERN FUEL COMPANY.

(Signed) JOHN L. HOWARD,

President.

(Signed) D. C. NORCROSS,

Secretary.

(Seal Western Fuel Company, San Francisco, Cal.
Incorporated Dec. 15, 1902.)

The Standard Portland Cement Company hereby consents to the foregoing assignment.

June 30th, 1906.

STANDARD PORTLAND CEMENT COMPANY.

(Signed) IRVING A. BACHMAN,

President.

(Signed) FRANK A. LOSH,

Secretary.

(Seal Standard Portland Cement Company, San
Francisco, Cal. Incorporated January 27, 1902.)

March 9, 1906.

Mess. Standard Portland Cement Co.,
Crocker Building,
City.

Dear sirs: We confirm the understanding as stated in your letter of March 8th concerning the amount of your and our contribution to the rebate of 10 cents payable under our joint agreement with E. B. & A. L. Stone Company.

Yours truly,

Pres'dt.

JHL.

DCN.

William J. Dingee,
Vice-President.

Irving A. Bachman,
Manager.

Frank A. Losh,
Secretary.

STANDARD PORTLAND CEMENT COMPANY.

Office: 30-34 Crocker Building,
Telephone: Private Exchange 302.

San Francisco, Cal., March 8th, 1906.

[200—66i]

Western Fuel Company,
City.

Gentlemen: In the matter of the contract between yourselves and the E. B. & A. L. Stone Co., whereby they receive Cement from the Standard Portland Cement Company at less than the current rate; it is understood that, when your commissions shall be reduced by agreement between ourselves to ten cents per barrel, the Standard Portland Cement Company will bear seven cents of such rebate to the Stone Co., and your Company will bear and pay the remaining three cents of said rebate.

If our understanding in this regard agrees with your own, will you kindly signify so by an exchange of correspondence?

Yours very truly,

By WILLIAM J. DINGEE, (Signed)

Vice-President.

STANDARD PORTLAND CEMENT COMPANY.

Original to D. C. N.

Copy to C. S. G.

The President read the following form of contract dated March 1, 1906, submitted by the Standard Portland Cement Company for the handling of their product.

Thereupon Mr. Joseph L. Schmitt offered the following Resolution which was seconded by Mr. Robert Bruce, and unanimously adopted:

RESOLVED: That the President and Secretary of this Corporation be, and they are hereby authorized and empowered to execute the foregoing contract dated March 1, 1906, with the Standard Portland Cement Company, subject to the conditions contained in the Resolution passed by the Standard Portland Cement Company, March 8, 1906, a certified copy of which is attached to said contract.

I, D. C. Norcross, Secretary of the Western Fuel Company do hereby certify that the foregoing is a true copy of a Resolution passed at a meeting of the Board of Directors of the Western Fuel Company held at San Francisco on the 19th day of March 1906.

San Francisco, Cal., Mar. 9, 1906. [201—66j]

William J. Dingee,
Vice-President.

Irving A. Bachman,
Manager.

Frank A. Losh,
Secretary.

STANDARD PORTLAND CEMENT COMPANY.

Office :

30-34 CROCKER BUILDING

San Francisco.

Works :

Napa Junction

Telephone : Private Exchange 302.

San Francisco, Cal., March 8th, 1906.

Western Fuel Co.,

City.

Gentlemen :

In the matter of the proposed contract between the Standard Portland Cement Company and the Western Fuel Company; at a meeting of the full Board of Directors of this corporation, held this 8th day of March, 1906, the following resolution was unanimously adopted:—

‘RESOLVED that the President and Secretary be and they are hereby authorized to execute the said contract on behalf of the Standard Portland Cement Company, provided, however, that it shall be understood and agreed between the parties to said contract that the said contract may be terminated by the Standard Portland Cement Company at its option in the event that John L. Howard, now the President of the Western Fuel Company, shall, at any time or for any reason, cease to be the chief executive officer of said corporation.’

I enclose herewith the said contract duly executed by this corporation with the understanding, in accordance with the foregoing resolution of our Board of Directors, that said execution take effect and the contract becomes operative upon notice to the Standard Portland Cement Company of the acceptance by the Western Fuel Company of the provisions embodied in the foregoing resolution.

Entertaining no doubt that this modification will be acceptable to you and awaiting official notification of your Board of Directors to this effect, I am,

Yours very truly,

(Signed) WILLIAM J. DINGEE,

Vice-President,

STANDARD PORTLAND CEMENT CO.

The Secretary then read the contract, dated the 1st day [202—66k] of March, 1906, proposed to be entered into between this Company and the Western Fuel Company, regarding the sale of its product, and on motion of Director Bachmna, seconded by Director Henshaw, the following resolution was unanimously adopted:

RESOLVED: That the President and Secretary be and they are hereby authorized to execute the said contract on behalf of the STANDARD PORTLAND CEMENT COMPANY, provided however, that it shall be agreed and understood between the parties to said contract that the said contract *that the said contract* may be terminated by the STANDARD PORTLAND CEMENT COMPANY at its option in

the event that JOHN L. HOWARD, now the President of the WESTERN FUEL COMPANY, shall, at any time, or for any reason, cease to be the Chief Executive Officer of said Corporation.

I, FRANK A. LOSH, Secretary of the STANDARD PORTLAND CEMENT COMPANY, do hereby certify that the above is a full true and correct copy of a resolution passed the 8th day of March, 1906 at a meeting of the BOARD OF DIRECTORS of the STANDARD PORTLAND CEMENT COMPANY, at which a quorum was present and voted in favor of said resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the STANDARD PORTLAND CEMENT COMPANY.

(Signed) FRANK A. LOSH,

Secretary.

STANDARD PORTLAND CEMENT COMPANY.

(Seal—Standard Portland Cement Company. San Francisco, Cal. Incorporated January 27, 1902.)

AGREEMENT.

AGREEMENT between the WESTERN FUEL COMPANY, A corporation, and the STANDARD PORTLAND CEMENT COMPANY, a corporation.

1. The entire product of any and all factories of the Cement Company shall be sold through the FUEL COMPANY, and the FUEL COMPANY agrees to use its utmost diligence in marketing said

product, good faith in this respect on the part of the FUEL COMPANY is the essence of this contract.

2. The selling price of the Cement shall be fixed by the CEMENT COMPANY, provided an advance in price shall not affect any contracts for sale or sales for future delivery already made by the FUEL COMPANY and accepted by the CEMENT COMPANY. All prices fixed shall be f. o. b., cars at the Factory or f. o. b., vessel at the Cement Company's shipping point for the cement either in paper sacks, textile sacks or barrels and the FUEL COMPANY agrees to [203—661] sell at said fixed prices with the FUEL COMPANY'S Commissions added.

3. Five cents per sack shall be paid to the FUEL COMPANY for every usable textile sack returned to the FACTORY, freight to the factory to be paid by the CEMENT COMPANY.

4. The FUEL COMPANY shall pay for all Cement delivered during each calendar month, one-half on the thirteenth and one-half on the twenty-eighth of the succeeding calendar month after such deliveries and shall assume all risks of bad debts.

5. The FUEL COMPANY'S compensation is to be fifteen cents per barrel until the Santa Cruz Portland Cement Company begins shipments after which it is to be ten centes per barrel on all shipments made after that date on all sales made at one dollar, or more, per barrel, and on all sales made at prices below one dollar per barrel, a commission of ten per cent on the price of the bulk Cement at the Factory.

6. The quality of the Cement shall be maintained at the highest possible point of excellence and to be

of the standard exacted by the United States Government, and the CEMENT COMPANY assumes responsibility for all claims of damage arising from inferior CEMENT and will examine into and test and defend all such claims at its own cost.

7. The FUEL COMPANY agrees to sell no brands of CEMENT other than those from the Standard and Santa Cruz factories.

8. The parties hereunto agree that there is nothing in this contract that can be construed into giving the FUEL COMPANY the right to act as a jobber, that is, to buy and sell above named Cements for its own account, excepting at San Francisco and Oakland, California, but in such cases the cost to buyers shall not be greater than the total of the following items:

Bulk price at Factory.

Cost of packages.

Transportation charges.

Selling Agents' Commission.

And twelve cents per barrel to cover warehouse charges and handling costs.

9. The CEMENT COMPANY agrees to supply cement for all contracts made by the FUEL COMPANY, unless prevented by strikes, or by causes beyond its control.

10. The responsibility of the CEMENT COMPANY ceases except as provided for in paragraph six, when goods are loaded on cars or vessels in good order.

11. If the CEMENT COMPANY shall sell any

Cement otherwise than through the FUEL COMPANY, the FUEL COMPANY shall be entitled to the same commissions on all such sales as if such sales had been made by or through it.

12. This contract applies to all Cement of the Standard Portland Cement Company, whether manufactured at its present Factory or at any other factories wheresoever situated.

13. This contract shall become operative at once and shall continue [204—66m] until August 31st, 1911.

IN WITNESS WHEREOF, the parties hereto have executed this contract in duplicate as attested by the signature of their proper officers and their corporate seals hereto affixed, this first day of March, 1906.

WESTERN FUEL COMPANY.

(Signed) JOHN L. HOWARD,
President.

(Signed) D. C. NORCROSS,
Secretary.

(Seal—Western Fuel Company, San Francisco, Cal.
Incorporated Dec. 15, 1902.)

STANDARD PORTLAND CEMENT CO.

(Signed) WILLIAM J. DINGEE,
Vice-President.

(Signed) FRANK A. LOSH,
Secretary.

(Seal—Standard Portland Cement Company, San
Francisco, Cal. Incorporated January 27,
1902.)”

Mr. DUNNE.—I now offer in evidence the contract with the Santa Cruz Portland Cement Co., which is marked “Exhibit C, R. B. T., N. P.” with its attached papers, which will be our Exhibit No. 3 on behalf of the complainant, and will be transcribed into the reporter’s notes.

Thereupon said exhibit 3 was received and read in evidence in this cause, and is in words and figures as follows, to wit:

[Complainant’s Exhibit No. 3.]

“For values received, the Western Fuel Company hereby sells, assigns, transfers and sets over unto the Western Building Material Company, the foregoing contract and all its rights thereunder, subject to the condition, however, that the Santa Cruz Portland Cement Company shall have the right to terminate said contract at its option in the event that John L. Howard shall at any time or for any reason cease to be the chief executive officer of the Western Building Material Company.

WESTERN FUEL COMPANY,

(Signed) JOHN L. HOWARD,

President.

(Signed) D. C. NORCROSS,

Secretary.

(Seal—Western Fuel Company, San Francisco, Cal.

Incorporated Dec. 5, 1902.) [205—66n]

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The Santa Cruz Portland Cement Company hereby consents to the foregoing assignment.

June 30th, 1906.

SANTA CRUZ PORTLAND CEMENT
COMPANY,

(Signed) IRVING A. BACHMAN,

Vice-Pres.

(Signed) FRANK A. LOSH,

Secretary.

(Seal—Santa Cruz Portland Cement Company, San
Francisco, Cal. Incorporated June 2, 1905.)

March 9, 1906.

Mess. Santa Cruz Portland Cement Co.,
Crocker Building,
City.

DEAR SIRS:*

To your letter of March 6th which states the understanding reached yesterday regarding our compensation in the matter of cement to be furnished under your specific contract with the Southern Pacific Company.

We confirm.

Yours truly,

JLH.
DCN.

Pres'dt.

William J. Dingee,
Vice-President.

Irving A. Bachman,
Manager.

Frank A. Losh,
Secretary.

SANTA CRUZ PORTLAND CEMENT
COMPANY.

Office :

30-34 Crocker Building,
San Francisco.

Works :

Davenport, Cal.

San Francisco, March 8, 1906.

Western Fuel Company,
City.

Gentlemen :

The Santa Cruz Portland Cement Company having agreed to furnish the Southern Pacific Company a maximum of 25,000 Bbls. of Cement per annum, during the first five years of its operation, it is understood that the Western Fuel Company shall receive, for any [206—660] and all of said 25,000 Bbls. of cement per annum, which may be so furnished, one-half of its regular selling commission.

If our understanding in this regard agrees with your own, will you kindly signify so by an exchange of correspondence?

Yours very truly,

(Signed) WILLIAM J. DINGEE,

President,

SANTA CRUZ PORTLAND CEMENT
COMPANY.

E.

Original to D. C. N.

Copy to C. S. G.

The president read the following form of contract dated March 1, 1906, submitted by the Santa Cruz Portland Cement Company for the handling of their product. ~

Whereupon Mr. Joseph L. Schmitt offered the following resolution, which was seconded by Mr. Robert Bruce and unanimously adopted:

RESOLVED: That the President and Secretary of this Corporation be, and they are hereby authorized and empowered to execute the foregoing contract dated March 1st, 1906, with the Santa Cruz Portland Cement Co. subject to the conditions contained in the resolution passed by the Santa Cruz Portland Cement Company, March 8, 1906, a certified copy of which is attached to said contract.

I, D. C. Norcross, Secretary of the Western Fuel Company, do hereby certify that the foregoing is a true copy of a Resolution passed at a meeting of the Board of Directors of the Western Fuel Company held at San Francisco, on the 9th day of March, 1906.
San Francisco, Cal., March 9, 1906.

.....,

William J. Dingee,
Vice-President.

Irving A. Bachman,
Manager.

Frank A. Losh,
Secretary.

SANTA CRUZ PORTLAND CEMENT
COMPANY.

Office:

30-34 Crocker Building,
San Francisco.

Works:

Davenport, Ohio.

San Francisco, March 8, 1906. [207—66p]

Western Fuel Co., City.

Gentlemen:

In the matter of the proposed contract between the Santa Cruz Portland Cement Company and the Western Fuel Company: at a meeting of the full Board of Directors, of this corporation, held this 8th day of March, 1906, the following resolution was unanimously adopted—

‘RESOLVED that the President and Secretary be and they are hereby authorized to execute the said contract on behalf of the Santa Cruz Portland Cement Company, provided, however, that it shall be agreed and understood between the parties to said contract that the said contract may be terminated by the Santa Cruz Portland Cement Company at its option, in the event that John L. Howard, now the President of the Western Fuel Company, shall, at any time or for any reason, cease to be the chief executive officer of said corporation.’

I enclose herewith the said contract duly executed

by this corporation with the understanding, in accordance with the foregoing resolution of our Board of Directors, that said execution takes effect and the contract becomes operative upon notice to the Santa Cruz Portland Cement Company of the acceptance by the Western Fuel Company, of the provision embodied in the foregoing resolution.

Entertaining no doubt that this modification will be acceptable to you and awaiting official notification of your Board of Directors to this effect, I am,

Yours very truly,

(Signed) WILLIAM J. DINGEE,

President,

SANTA CRUZ PORTLAND CEMENT
COMPANY.

The Secretary then read the contract dated the first day of March, 1906, proposed to be entered into between this company and the Western Fuel Company, regarding the sale of its product, and on motion of Director Morrison, seconded by Director Losh, the following resolution was unanimously adopted:

RESOLVED: that the President and Secretary be and they are hereby authorized to execute the said contract on behalf of the Santa Cruz Portland Cement Company, provided however, that it shall be agreed and understood between the parties to said contract that the said contract may be terminated [208—66q] by the Santa Cruz Portland Cement Company at its option, in the event that John L. Howard, now the President of the Western Fuel Com-

pany, shall, at any time or for any reason, cease to be the chief executive officer of said corporation.

I, Frank A. Losh, Secretary of the Santa Cruz Portland Cement Company, do hereby certify that the above is a full, true and correct copy of a resolution passed the 8th day of March, 1906, at a meeting of the Board of Directors of the Santa Cruz Portland Cement Company, at which meeting a quorum was present and voted in favor of said resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Santa Cruz Portland Cement Company.

(Signed) FRANK A. LOSH, Sec'y.

SANTA CRUZ PORTLAND CEMENT
COMPANY.

(Santa Cruz Portland Cement Company—Seal—
San Francisco, Cal. Incorporated June 2,
1905.)

AGREEMENT.

AGREEMENT between the WESTERN FUEL COMPANY, a corporation, and the SANTA CRUZ PORTLAND CEMENT COMPANY, a corporation.

1. The entire product of any and all factories of the Cement Company shall be sold through the FUEL COMPANY and the FUEL COMPANY agrees to use its utmost diligence in marketing said product, good faith in this respect on the part of the FUEL COMPANY is the essence of this contract.

2. The selling price of the Cement shall be fixed by the CEMENT COMPANY, provided and advance

in price shall not affect any contracts for sales or sales for future delivery already made by the FUEL COMPANY and accepted by the CEMENT COMPANY. ALL prices fixed shall be f. o. b. cars at the Factory, or f. o. b. vessel at the Cement Company's shipping point, for the Cement either in paper sacks, textile sacks or barrels and the FUEL COMPANY agrees to sell at said fixed prices with the FUEL COMPANY'S commissions added. [209—66r]

3. Five cents per sack shall be paid to the FUEL COMPANY for every usable textile sack returned to the FACTORY, freight to the factory to be paid by the CEMENT COMPANY, settlements for same to be made semi-annually.

4. The FUEL COMPANY shall pay for all cement delivered during each calendar month, one-half on the thirteenth and one-half on the twenty-eighth of the succeeding calendar month after such deliveries and shall assume all risks of bad debts.

5. The FUEL COMPANY'S compensation is to be ten cents per barrel on all sales made at one dollar or more per barrel, and on all sales made at prices below one dollar per barrel, a commission of ten per cent on the price of the bulk cement at the factory.

6. THE quality of the cement shall be maintained at the highest possible point of excellence and to be of the standard exacted by the United States Government, and the CEMENT COMPANY assumes responsibility for all claims of damage arising from inferior cement and will examine into and

test and defend all such claims at its own cost.

7. The FUEL COMPANY agrees to sell no brands of cement other than those from the Santa Cruz and Standard factories.

8. The parties hereunto agree that there is nothing in this contract that can be construed into giving the FUEL COMPANY the right to act as a jobber, that is, to buy and sell above named cements for its own account, excepting at San Francisco and Oakland, California, but in such cases, the cost to buyers shall not be greater than the total of the following items:

Bulk price at Factory.

Cost of packages.

Transportation charges.

And twelve cents per barrel to cover warehouse charges and handling costs.

9. The CEMENT COMPANY agrees to supply cement for all contracts made by the FUEL COMPANY, unless prevented by strikes or by causes beyond its control. [210—66s]

10. The responsibility of the CEMENT COMPANY ceases except as provided in Paragraph Six when goods are loaded on cars or vessels in good order.

11. If the CEMENT COMPANY shall sell any Cement otherwise than through the FUEL COMPANY, the FUEL COMPANY shall be entitled to the same commissions on all such sales as if such sales had been made by or through it.

12. This contract applies to all cement of the Santa Cruz Portland Cement Company, whether

262 *Standard Portland Cement Corporation*

manufactured at its present factory or at any other factories wheresoever situated.

13. This contract shall become operative September 1st, 1906, or whenever the factory shall begin shipments, and shall continue until August 31st, 1911.

IN WITNESS WHEREOF, the parties hereto have executed this contract in duplicate, as attested by the signatures of their proper officers, and their corporate seals hereto affixed this first day of March, 1906.

WESTERN FUEL COMPANY,
By JOHN L. HOWARD, (Signed)
President.

By D. C. NORCROSS, (Signed)
Secretary.

(Seal—Western Fuel Company. San Francisco, Cal. Incorporated, Dec. 15, 1902.)

SANTA CRUZ PORTLAND CEMENT
COMPANY.

By WILLIAM J. DINGEE, (Signed)
President.

By FRANK A. LOSH, (Signed)
Secretary.

(Seal—Santa Cruz Portland Cement Company—
San Francisco, Cal. Incorporated June 2,
1905.) [211—66t]

The MASTER.—Very well. They will be received in evidence and the Reporter will copy them into the record.

(Testimony of John L. Howard.)

The WITNESS.—(Continuing.) The rate of compensation under these contracts differed at different times. In the early contract with the Standard Company, the rate of compensation was 15 cents per barrel. At the time of discussing the contract with the Santa Cruz Co. we voluntarily offered to take 10 cents per barrel for the combined output of the two plants. The contracts were executed on that basis. After the Santa Cruz plant had been operating for a year, the quality of the cement turned out to be so uniformly bad that it was disastrous to us, and at a discussion in the early part of 1908, Mr. Dingee adopted a suggestion which I made that for the first 750,000 barrels, which was the estimated annual capacity of the Standard plant, we should be paid 15 cents per barrel, and for the balance of the joint output we would get 10 cents. When the Standard Portland Cement Co. became the Standard Portland Cement Corporation, no change was made in the rate of compensation for marketing the product.

In transacting business with these various corporations, the Standard Portland Cement Company and the Standard Portland Cement Corporation and the Santa Cruz, I did my business chiefly with Mr. Dingee; sometimes in his absence with Mr. Bachman, and sometimes with Mr. McGary, but generally with Mr. Dingee. I do not know who organized either the Standard Portland Cement Company or the Standard Portland Cement Corporation. I do not know who were the incorporators. I knew that

(Testimony of John L. Howard.)

Mr. Dingee and Dr. Bachman were the chief factors in bringing about the incorporation. Further than that I do not know. Mr. Dingee and Dr. Bachman organized the Santa Cruz Company; further I know not. As to whether I was interested in the floatation of the Santa Cruz Company, we helped to place some of the bonds, through our office, but I forget what quantity. I did not receive any compensation [212—67] for that service, and I do not remember how many bonds I placed. I think that there was no contract of any sort between me or my companies and the Santa Cruz plant in the matter of their bond floatation.

I met Dingee first through hiring a house from him in 1881, but I never had any business with him until 1903, after we started to sell their cement. My business relations with him then were purely in connection with his cement enterprise. Those business relations were more or less intimate as they had to be through our selling their product. We resigned the selling agency for Mr. Dingee's cement companies in December, 1908. Mr. Dingee and myself had no social relations. Aside from the fact that we were selling agents for the cements companies, I bought some of the bonds of his Atlantic plant that he was starting in the east. I think that this was in 1907. I was on the plant with Dr. Bachman on the morning of the earthquake. I remember that. They floated a company and I bought some of the bonds, just the same as anybody else did. I think it was during 1907 that I took these bonds. I sub-

(Testimony of John L. Howard.)

scribed for our company for nineteen of the bonds of the North Western Portland Cement Company.

Q. Was there any special reason why you should subscribe for these nineteen bonds, that you recollect?

A. Except that we were expecting to have the sales agency of the company, and we were willing to assist. There was no other reason that I can recollect except that, why we subscribed for those nineteen bonds.

Q. Is it not a fact that those nineteen bonds were subscribed for by you to assist Mr. Dingee in acquiring control of the stock of the Bellingham Bay and British Columbia Railway?

A. I do remember now that at the time he was negotiating for the control of the Cornwall interests in the Bellingham Bay Company, he said he was short some money, and I think that [213—68] our subscription was made at that time to help him make that payment. I recollect that now. Aside from these facts, and from my being sales agent, there were no other facts in my business relations with Mr. Dingee. I never personally loaned any money to Dingee.

Q. Did any company of which you were an officer loan any money to Mr. Dingee?

A. At the first of October, 1908, we made to him what was the first real loan. During the summer of 1908, when he was becoming pressed more or less for money, we sometimes anticipated the due dates for payment—twice a month, we paid the cement

(Testimony of John L. Howard.)

companies, on the 13th and the 28th, under our agency contract. But we did not aim to let him get into our debt, but we sometimes anticipated the payments that were due from us. And on the 1st of October, 1908, I remember before going to British Columbia, he was in great stress for money, and we advanced him \$75,000 and he left a mortgage, I think in my name, for some property at Redwood City in this State; and while I was in the north that mortgage was changed into a deed, but I did not know that until I came back. Aside from anticipating payments under the agency contracts, and aside from making this loan of \$75,000, there were no other facts in my business relations with Mr. Dingee that I can recollect excepting my connection with these promotion shares of the Northwestern Company. I never at any time stood good for any of Mr. Dingee's debts, nor did I ever seek to protect him against any of his creditors. The facts in connection with a letter which I wrote to the Metropolis Trust Company are these: After my return from British Columbia, I found that a deed had been given by Mr. Dingee to our Mr. Smith in my name, for this Redwood property, in the matter of this same loan of \$75,000 to which I refer. I called on Mr. Dingee, who *he* was ill in bed [214—69] at the Fairmount Hotel, and told him that I wanted him to give some declaration of trust in regard to this property, so that if anything happened to me it would not be mixed up with my affairs. We discussed it and he agreed with me. Well, I saw Mr.

(Testimony of John L. Howard.)

Young, the secretary of the company, and asked him if he would prepare the papers. He was a lawyer in Mr. Dingee's office. There was some delay about it, and I telephoned him and he said he had been too busy. Then I went to Mr. Willard of Page & McCutcheon, and he prepared a letter setting forth the terms under which I held this property. I think it was on the 9th day of November that Mr. Dingee came down with an acknowledgment of that letter, and it was during that visit that he expressed his distress about a \$50,000 which had been negotiated with the cement company, I think by Mr. Young, with Mr. Dingee's indorsement on the note. They were pressing him. I suggested to him whether or not he could not temporize with them and arrange that the note should be protected out of the sale of this property after our claims had been satisfied. At his suggestion I dictated a letter addressed to them, and gave it to him. The concluding paragraph, I remember, was that upon the authority of Mr. Dingee I would do this, that is, pay them this \$50,000 out of any proceeds of the sale of this property that might be left after the satisfaction of our claims. I think you have a copy of that letter; it is dated November 9th, 1908.

Q. Is this a correct copy of the letter in question (handing)? A. Yes, I think it is.

Mr. DUNNE.—I offer to read this in evidence.

Mr. OLNEY.—Are you sure that it is a correct copy, Mr. Howard?

A. I think it is, as nearly as I can remember the

(Testimony of John L. Howard.)

[215—70] contents of it. I have not seen it since.

Mr. OLNEY.—No objection.

Thereupon said letter referred to by the witnesses was received and read in evidence in this cause, and is in words and figures as follows, to wit:

“November 12, 1908.

Metropolis Savings & Loan Society,
San Francisco, California.

Dear Sirs:—

This is to certify that William J. Dingee has deeded to me, (which deed is on record at Redwood City) a tract of land at Redwood City said to comprise 300 acres which is now being subdivided, and which it is said Baldwin & Howell have appraised at a market value of \$600,000.

This land is held by me as security for advances made and to be made by the Western Fuel Company and Western Building Material Company and John L. Howard to the Santa Cruz Portland Cement Company, the Standard Portland Cement Corporation and William J. Dingee, and we think these advances will not exceed \$200,000.

Upon the authority of William J. Dingee, from whom I received this title, I will agree to protect any moneys that may be due you in excess of the claims of the parties above referred to.

Yours truly,

JOHN. L. HOWARD.”

WITNESS.—(Continuing.) This letter was delivered, as I afterwards learned from Mr. Dingee,

(Testimony of John L. Howard.)

to the Metropolis people, who made claim on me for the protection, and I turned the matter over to Mr. Warren Olney and we declined to recognize this because Mr. Dingee never gave the authority to do it. Afterwards this property was deeded by me to Mr. William H. Crocker, upon his giving me a bond of indemnity to protect me against the Metropolis people.

I often had conversations with Mr. Dingee concerning his affairs as to cement operations, from along about 1903 down. I never individually loaned any money to Mr. Dingee, but we loaned that \$75,000 to the cement company—this loan was made at our office, in consultation between myself and the vice-president and the treasurer. The lender was the Western Building Material Co.

I was introduced to Dr. Bachman in December, 1902, at Napa Junction when the Standard Portland Cement Company there was about [216—71] being finished. Since that time, I did not come much in contact with Dr. Bachman except during Mr. Dingee's absence, and then he was in the saddle in the cement company's office and I had to talk with him about whatever was necessary to discuss with relation to the marketing of the product. I had no social relations whatever with Dr. Bachman, but I did discuss the business of the Northwestern Portland Cement Company with him. I had a speaking acquaintance merely with Mr. McGary prior to the time when he came to be vice-president of these cement companies; after that I saw more or less of

(Testimony of John L. Howard.)

him during the absence of Mr. Dingee and Dr. Bachman. Occasionally he happened to be in charge here. Prior to those times I don't exactly know what had been Mr. McGary's occupation. I think he was vice-president of the Contra Costa Water Company at one time. He had been associated with Mr. Dingee, but I do not know how long, nor do I know what was the general nature of the relations between Mr. McGary and Mr. Dingee. Thomas R. Stockett is the manager of the mines of the Western Fuel Company at Nanaimo. I have known him 12 or 15 years altogether. I have known him very well; and he has been in the employ of our company since 1904. I do not know Mr. Rand. I know Mr. Graham; he is the superintendent of our company at Nanaimo; and I have known him since 1904. I have known Mr. Foster Young since he came to be secretary of the cement companies. I do not know for whom Thomas R. Stockett was trustee. Mr. Stockett and Mr. Graham obtained from the Northwestern Portland Cement Company bonds through our office. I think Mr. Rand obtained his from Evans, Coleman & Evans, which came through our office. The plant of the Standard Portland Cement Company was at Napa Junction, and after that company became the Standard Portland Cement Corporation, it still maintained its plant at Napa Junction, which is in Napa County in the State of California. I do not know who organized the Northwestern Portland Cement Company. As to who controlled these various corporations, the office control [217—72] was

(Testimony of John L. Howard.)

in the hands of Dr. Bachman and Mr. Dingee, and their associates, but I do not know what stock ownership they held in any of them. The executive control was in their hands and in all my business transactions I dealt with them. The only site that the Northwestern Portland Cement Company had was at [218—72a] Kendall, in Whatcom County, Washington. The Northwestern Portland Cement Company and the Standard Portland Cement Company and Corporation were independent corporations. So far as I know, up to May, 1908, there had been no relations, contractual or otherwise, between the Standard Portland Cement Corporation and the Northwestern Portland Cement Company that I knew of.

Q. Do you know who promoted the Northwestern Company?

A. Well, I should say Mr. Dingee and Dr. Bachman did.

Q. Do you know anything definite on that subject, or is that a supposition of yours?

A. Oh, it is more than a supposition, I think it was a fact.

Q. They stated as a fact that they did promote that Company? A. Yes.

Q. Did anyone assist them in the promotion of that company, if you know?

A. Do you mean other than myself?

Q. Well, did you?

A. I helped place some of the bonds.

Q. Yes, but in the promotion of the company

(Testimony of John L. Howard.)

proper? A. I know of no one else.

Q. Except Mr. Dingee and Dr. Bachman?

A. I know of no one else. As to what led to the promotion of that company: after we became connected with them in the selling business—as you know I was in the habit of going frequently to Puget Sound—we were marketing a good deal of the cement there, and I advised Dingee and Bachman to consider the location of a plant in that country, partly to take care of a local market and partly as an insurance to their investments in California. By the phrase, “as an insurance to their investments in California,” I mean, to prevent the dumping of cement [219—73] from any northern mill into their market here by having a plant on the spot. It was of strategic importance as well as economical importance to have a plant in the north, and as incidental to that, it was also advisable to have that northern plant established as promptly as possible. The conversations first began away back in 1904. I knew of the connection of Evans, Coleman & Evans with this property of Balfour-Guthrie & Co. which has been referred to; and knowing that they had a disposition to sell, Mr. Percy Evans came down to San Francisco at my instance and met Messrs. Dingee and Bachman at lunch with me and a sort of proposal was discussed, but the terms suggested by Messrs. Dingee and Bachman were not entertainable by Mr. Evans, and he left the interview with more or less disgust. The thing remained quiet then until the spring of 1906, with more or less agitation on my part. Then I was com-

(Testimony of John L. Howard.)

missioned by them to try to find some properties suitable for cement making on Puget Sound. I enlisted the interest of some friends up there to keep their eyes opened for some lime deposits, and finally, in June, 1906, Mr. Evans telegraphed me that he had a man named Riedle that could take us to see a lime ledge. I went to Vancouver, and Mr. Evans and I went up to Sumas on the line of the Bellingham Bay and British Columbia Railway, and we three went to Kendall and looked at a lime deposit that was owned by Reidle. I returned to Vancouver and telegraphed to Mr. Dingee that I had found a lime deposit and to send Dr. Bachman to examine it. In a few days—I think within a week—Bachman came to Vancouver. Mr. Evans, Reidle and myself met him there and went with him, and he spent a day on the property, passed it, and authorized that it be purchased. He also authorized me to purchase the farm of Peter Zender, which lay at the bottom of the hill, on the top of which hill this limestone ledge was exposed. He left for San Francisco, I think, within twenty-four hours [220—74] after his arrival in the north. There was more or less timber scattered over that hill. Then, in looking over the maps at Bellingham I found that the line of Peter Zender and Reidle did not meet, that there was a strip of 80 acres of land intervening which had a strategic value as a right of way to bring the material from the quarry if it was opened up on the Riedle claims down to the site for the factory, and learning that that land had not been taken up, I consulted a land office lawyer

(Testimony of John L. Howard.)

in Seattle, and at his instance filed on it as a stone and timber claim, in my own name, he preferring that course to my acting as agent for Dr. Bachman. I had a world of trouble with that claim. The general character of the trouble was that some land-jumpers there put in adverse claims and I had to go to Seattle a couple of times, and the case was tried there and dismissed by the land office officials, and then it was referred by the attorney for the other side to the Commissioner of the General Land Office, and it had to wait its turn there, and finally a decision came down in favor of my locations; then there was a threat that it would be carried to the Secretary of the Interior—the Court of last resort—but finally I got notice that a patent had been issued to me. The attorney who appeared for me in this litigation concerning this claim was a land office lawyer of Seattle by the name of Randolph, and I consulted with Mr. C. W. Howard in Bellingham, of the firm of Newman & Howard; this is the same C. W. Howard who was subsequently made resident agent for the State of Washington for the Northwestern Portland Cement Company at my suggestion to Mr. Morrision when Mr. Morrision was preparing the papers. After getting the patent I was, of course, perfectly free to deal with the property. Prior to that time I had not been. At the time of the purchase of these bonds by Mr. Dingee of the Standard Company, I told him about this piece of land that still stood in my name, [221—75] and he took it in at what I roughly figured up was the cost to me. In other words, there

(Testimony of John L. Howard.)

was the same amount of land in this piece as there was in the Reidle piece; he paid \$6,000.00 for that piece, and I told him that as nearly as I could calculate it my expenses were about \$1,800.00. I do not remember what were the items that made up the \$1,800.00; but I made a deed to the Standard Portland Cement Corporation and attached to it all the evidence I then had as evidence of title, which was the receipt of the Land Office in Seattle. Afterwards, when I got notice of the patent I went to Mr. Young and borrowed the tax receipt in order to get the patent, and when I received the patent I turned the patent in to Mr. Young. That is the end of that. I have not now any source of information by which I can advise you as to the items which made up this \$1,800.00. After that, my recollection is that in the course of time after Dr. Bachman and Mr. Dingee got ready, I think Mr. Morrison was the attorney for them, there was organized the Puget Sound Portland Cement Company. I think they abandoned that name and reorganized it under the name of the Northwestern Portland Cement Company.

Q. Did you take any further interest in the matter after that?

A. During the time I was visiting the north, and getting these papers together for them and paying out money for them when that work was over my work ceased in that respect. I think this is the patent to which I have been referring. I delivered it to Mr. Young. He has had possession of it since I got it.

Mr. DUNNE.—Any objection to this, Mr. Olney?

Mr. OLNEY.—No.

Mr. DUNNE.—I offer in evidence as “Complainant’s Exhibit 4,” the patent from the United States of America to John L. Howard dated May 14, 1909; and I will ask the Reporter to transcribe that into his notes, and the indorsements thereon, as an [222—76] exhibit on behalf of the complainant.

And said exhibit was thereupon received and read in evidence in this cause, and is in words and figures as follows, to wit:

[Complainant’s Exhibit No. 4.]

“THE UNITED STATES OF AMERICA.

To All to Whom These Presents shall Come, Greeting:

Certificate No. 21449.

WHEREAS, JOHN L. HOWARD, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Seattle, Washington, whereby it appears that full payment has been made by the said *Jon* L. Howard according to the provisions of the Act of Congress on the 24th of April, 1820, entitled ‘An Act making further provision for the sale of the Public Lands,’ and the acts supplemental thereto, for the west half of the southwest quarter of Section twenty-three, in Township forty north of Range five east of the Willamette Meridian, Washington, containing eighty acres, according to the Official Plat of the survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tract has been

purchased by the said John L. Howard:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAVE GIVEN AND GRANTED and by these presents DO GIVE AND GRANT, unto the said John L. Howard, and to his heirs the said Tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances of whatever nature, thereunto belonging, unto the said John L. Howard and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches, and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

In testimony whereof, I, William H. Taft, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the fourteenth day of May, in the year of our Lord one thousand nine hundred and nine and of the In-

(Testimony of John L. Howard.)

dependence of the United States the one hundred and thirty-third.

By the President: WM. H. TAFT.

By M. W. YOUNG, Secretary.

H. W. SANFORD,

Receiver of the General Land Office.

Patent Number 61534.

No.

Received for record this 19 day of June, 1909, at 9 A. M., and recorded [223—77] at request of Newman & Howard, in Vol. 3 of Pat. Records, at Whatcom County, Washington, at page 113.

ALEX. VAN WYCK,

County Auditor.

By WILL D. WALLACE,

Deputy Auditor.

Compared L.E.K. M.T. 1/00 Pd.”

Q. Is this the deed to which you have made reference?

A. Yes; that is my signature. I think it is the deed; yes, and that is the signature of my wife also.

Mr. DUNNE.—I offer in evidence as “Complainant’s Exhibit 5,” a deed from John L. Howard and Helen L. Howard, his wife, parties of the first part, to the Standard Portland Cement Corporation, party of the second part, of the same property referred to in the patent which has just been referred to, and ask the reporter to transcribe it into his notes as an exhibit on behalf of the complainant.

Thereupon said exhibit No. 5 was received and read in evidence in this cause, and is in the words and figures as follows, to wit:

[Complainant's Exhibit No. 5.]

“THIS INDENTURE, made the thirtieth day of April, one thousand nine hundred and eight, BETWEEN John L. Howard and Helen L. Howard, his wife, the parties of the first part, and the Standard Portland Cement Corporation, the party of the second part, WITNESSETH: That the said parties of the first part, in consideration of the sum of Eighteen Hundred dollars, gold coin of the United States of America, to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain and sell, unto the said party of the second part, and to its heirs and assigns forever; all that certain lot, piece or parcel of land situate in the County of Whatcom, State of Washington and bounded and described as follows, to wit:

West half of South West quarter of Section No. twenty-three in Township No. forty, North of Range No. five East Willamette Meridian.

Together with the tenements, hereditaments and appurtenances thereunto belonging, or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, the said premises, together with the appurtenances, unto the said party of the second part, and to its heirs and assigns forever.

(Testimony of John L. Howard.)

IN WITNESS WHEREOF, the said parties, of the first part have hereunto set their hands the day and year first above written.

JOHN L. HOWARD.

HELEN L. HOWARD.

Signed and delivered in the presence of

D. C. NORCROSS.

M. V. COLLINS. [224—77a]

State of California,

City and County of San Francisco,—ss.

I, M. V. Collins, Notary Public, do hereby certify that on this 4th day of May, 1908, personally appeared before me John L. Howard and Helen L. Howard (his wife), to me known to be the individuals described in and who executed the within instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal, this 4th day of May, A. D. 1908.

[Seal]

M. V. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission will expire April 12, 1909."

"Endorsed: Deed. John L. Howard et ux. to Standard Portland Cement Corporation."

WITNESS.—(Continuing.) As to how this deed came to be drawn in favor of the Standard Portland Cement Corporation rather than the Northwestern Portland Cement Company, I was selling to the same

(Testimony of John L. Howard.)

party, the same corporation, by arrangement with Mr. Dingee, that bought the bonds of the Northwestern, that is the explanation of that. When the Northwestern Portland Cement Company was being projected, I learned generally what its financial scheme was. Mr. Dingee was my source of information and he said it was to be 2,000,000 of bonds and 5,000,000 of stock; and he proposed to give 200% of stock and a bonus in the beginning with each bond; and then he and Dr. Bachman changed their plan [225—77b] during the period of consideration and cut the bonus to 100%. I could not tell how frequently I discussed these matters with Mr. Dingee. Frequently we would luncheon together to discuss the selling market and these things would come up in the course of conversation, sometimes incidentally and sometimes purposely. I did not have special meetings with him for the purpose of discussing the financial scheme of the Company. I recollect nothing more than in that general way what Mr. Dingee said concerning the financial scheme of the Northwestern Company. It was part of Mr. Dingee's plan to establish a plant at Kendall. He had a comprehensive scheme for the control of the cement business of the coast, of which the Northwestern was to be one of the units, to be gathered together ultimately under the Standard Portland Cement Corporation.

Q. What was the purpose of the bond issue of the Northwestern Company?

A. Well, I assume that it was for the construction of the plant, but I was not a party to the arrange-

(Testimony of John L. Howard.)

ment or the capitalization scheme of organization. I did not have anything to do with that at all. As to my having anything to do with the placing of the bonds, some of the people whom I knew and who knew that I was connected with the cement companies, knowing of the success of the Santa Cruz, from the investors' point of view, for example, there were 200% of stock given out as a bonus and before the factory started the stock was worth \$70.00 a share. Evans, Coleman & Evans spoke to me from the very beginning. Mr. Evans was with me in nearly all my trips to Kendal and he was quite well posted as to what was going on, and his firm wanted some; and when Mr. Stockett heard of the thing he wanted some and spoke for some, and spoke for Mr. Graham, and Mr. Sidney Smith wanted some of them, and I think altogether there were \$95,000 or \$100,000 of those bonds bespoken. [226—78]

Q. How was it these people applied to you in that behalf because of the success of the Santa Cruz Company?

A. Well, it was a good speculative thing, and the bonds on the property were a first lien and the stock was a gift.

Q. What I want to get at is—

A. (Intg.) You mean, why did they come to me instead of going to the company?

Q. Yes. What was the point of connection? Why should they come to you on the matter of these bonds because of the success of the Santa Cruz Company a Dingee Company?

(Testimony of John L. Howard.)

A. Well, they wanted some of the bonds of the Northwestern. Dingee and Bachman were a success for the time. It is the fact that these people knew that I was associated with Dingee and Bachman—in the selling business. They knew that I was connected with the people who were putting through the Northwestern Company.

No plant was ever completed at Kendall. No factory was ever built there. They cleared off about 40 to 50 acres of land and built a spur track in. This spur track was about a mile long and ballasted all the way.

Q. What else was done? A. Cleared the land.

Q. Anything else?

A. That is all. There was no cement making machinery put on the Kendall site. There were a couple of logging engines there pulling stumps. I do not know whether any machinery was ordered for the Kendall site, except on the authority of Mr. Dingee and Mr. Bachman. It never got there to my knowledge. The Northwestern Portland Cement Company never turned out a pound of cement. Its bonds are not listed anywhere that I know of.

I received 9,000 shares of the stock of the Northwestern [227—79] Portland Cement Company in the early part of 1907 from Mr. Dingee's office. As to the circumstances under which Mr. Dingee gave me those 9,000 shares, in the beginning of 1906 when he first took into consideration my talk for the establishment of a plant he resolved to put one in if the deposits could be found, the Balfour-Guthrie com-

(Testimony of John L. Howard.)

pany had deposits there already, they owned them on the south side of the valley—I mean the ones that Mr. Evans referred to, and I was advised by Mr. Dingee to negotiate or try to negotiate with Balfour-Guthrie & Company for the purchase of their property; I knew both of them and they did not know each other. I made Balfour-Guthrie & Company, on Mr. Dingee's behalf, an offer. They came back with a counteroffer, which he declined, and then as no business could result from that negotiation I followed up the deposits which were reported by Mr. Evans. I have detailed the result of that. During these conversations Mr. Dingee voluntarily offered that if and when a company and a plant was established, I should share equally with him and Dr. Bachman in whatever promotion share profits there might be.

Q. That statement, then, was made by Mr. Dingee during the time of the Balfour-Guthrie negotiations, and before the Northwestern Company had been projected? A. Upon organization.

Q. Now, is it not the fact, Mr. Howard, that these 9,000 shares which you received were a voluntary offer by Mr. Dingee in the early part, not of the Balfour-Guthrie offer, but in the early part of the Northwestern Portland Cement Company's affairs under which you were to share equally with Dingee and Bachman in whatever promotion share profits there might be?

A. The voluntary offer was made by Mr. Dingee during the currency of negotiation with Balfour-

(Testimony of John L. Howard.)

Guthrie & Company, and were renewed by him after those negotiations failed. [228—80]

Q. I will ask you if you testified as follows, upon this subject matter and also whether this is not the only testimony which you gave upon this subject matter, when giving your testimony as a witness upon deposition, before the notary, Mr. Treat, on January 6th, 1911, in the Crocker Building, in San Francisco, namely:

“Q. Why did you receive those shares?

A. A voluntary offer on the part of Mr. Dingee in the early part of the Northwestern affairs under which I was to share equally with him and Dr. Bachman in whatever promotion share profits there might be.”

Did you so testify? A. I did.

Q. Was that testimony true?

A. That testimony was true, but I did not segregate in that the negotiations. I did not refer in that testimony there to the negotiations that had just previous to this thing been going on with Balfour-Guthrie, but the promise was held good throughout them all. The profit referred to in this offer of Mr. Dingee's was whatever stock profit might come to the promoters after taking care of the stock bonus that went with the bonds. When that offer was renewed during the early part of the Northwestern affairs, it had to do with the promotion of the Northwestern Portland Cement Company—it was understood from the beginning of our talk to be the establishment of a plant up in Puget Sound. The giving

(Testimony of John L. Howard.)

of these 9,000 shares did not include any recompense to me for the placing of the bonds. Dr. Bachman had a conversation with me once on that subject. During Mr. Dingee's absence in the east, he came to my office on one occasion and began discussing the Northwestern shares, and said that they had arranged to finance this company and that even if I did not place any of the bonds they would give me \$600,000 of stock but if I did place 300,000 of bonds they would [229—81] give me 900,000 of the stock. Nine hundred thousand is what came finally to me. I did not discuss the matter with Dr. Bachman. That was at variance with the voluntary offer of Mr. Dingee which had been made before.

I learned of the Reidle deposit within a month after the Balfour-Guthrie proposal came to an end, very shortly afterwards. I think it may have been a little bit later, but they were close together.

Q. I will ask you if on the occasion of your testimony when given as a witness upon your deposition on the occasion referred to, you testified as follows:

“Q. What was exactly the offer which Mr. Dingee made to you?

A. Equal participation with him and Dr. Bachman in the promotion shares.

Q. Of the Northwestern Portland Cement Company?

A. Of the Northwestern Portland Cement Company.

Q. And when was it that Mr. Dingee made that offer to you?

(Testimony of John L. Howard.)

A. I think about the time of the discovery of the deposits, and a mental decision, at least, on their part, that the company would be organized.

Q. When you speak of the discovery of the deposits, you mean— A. In the middle of 1906.

Q. At Kendall, in Whatcom County, Washington?

A. Yes.

Q. There was no other consideration was there for the 900,000 shares of stock to which you have referred? A. No.”

Did you give that testimony on that occasion?

A. I did. It was true, with this additions, Mr. Dunne, that when I was testifying before you will notice I made no reference whatever to negotiations with Balfour-Guthrie, which immediately preceded the discovery of the claim in Kendall, but there was a voluntary offer on the part of Mr. Dingee, and a distinct understanding during the time that we were negotiating with the Balfours, that I was to share in the promotion profits. I don't recollect making any statement of that character at any time during my deposition. I did not refer I say, to the Balfour [230—82] negotiations at all; and this is the first time that I have made any statement of that kind about the Balfour negotiations.

The MASTER.—I think, gentlemen, if there is no objection urged about that course, it would be better for the sake of the record that the rulings on the reserved questions submitted yesterday should be postponed until the close of Mr. Howard's examination, although I am ready to make a ruling now.

(Testimony of John L. Howard.)

There is no particularly objection to that now, I suppose, is there?

Mr. DUNNE.—No, sir.

Mr. OLNEY.—The objection was made to Mr. Evans' testimony.

The MASTER.—There were a number of objections and motions to strike out taken under advisement yesterday and I stated that I would announce a ruling at 10 o'clock this morning, but I don't like to have the record of the witness split up with extraneous matter, and I think it would be better if the rulings were made at the close of Mr. Howard's examination—simply for the purpose of the record in the case.

Mr. OLNEY.—There is no objection.

WITNESS.—(Continuing.) Mr. Dunne, you touched yesterday on the subject of compensation under these contracts. If I testified that after the first of January, 1908, the compensation was continuously 15 cents per pound, I would like to correct that and make an explanation of why the compensation differs from the price stipulated in the contract. You will find that the contracts with the Standard Portland Cement Company and the Santa Cruz executed in 1906, provided for a commission payment of 10 cents per barrel. During and after the panic in the latter part of 1907, both companies were very remiss in the payments of the accounts which we had against them; for example, for the claims for the bad quality of cement and for credits for empty bags returned to the factory. So that after one of

ration, has been created, and authorized to be created, to the amount of \$2,000,000 in United States gold coin, that the amount of stock represented at said stockholders' meeting was 50,000 shares of the par value of \$100 each aggregating \$5,000,000 of par value; that the vote by which said bonded indebtedness was created, accomplished and authorized was a vote in favor thereof by stockholders representing 50,000 shares of the subscribed and issued capital stock of the corporation, which is more than two-thirds of the subscribed capital stock of the corporation.

IN WITNESS WHEREOF, we have hereunto set our hands and caused the corporate seal of said corporation to be hereunto affixed, this 3rd day of November, 1906.

WILLIAM J. DINGEE,

President of the Northwestern Portland Cement Company and Chairman of Said Meeting of Stockholders.

[Corporate Seal]

FRANK A. LOSH,

Secretary of Northwestern Portland Cement Company and Secretary of Said Meeting of Stockholders.

WILLIAM J. DINGEE,

EDWARD McGARY,

A. F. MORRISON,

W. C. WEBB,

FRANK A. LOSH,

Directors of Northwestern Portland Cement Company. [458—151cc]

STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

On this 3rd day of November, 1906, before me HENRY P. TRICOU, a Notary Public in and for the City and County of San Francisco, duly commissioned and sworn, personally appeared William J. Dingee, known to me to be the President of Northwestern Portland Cement Company, the corporation described in the within and annexed instrument, and Chairman of the meeting of stockholders of said instrument as such Chairman and President, and Frank A. Losh, known to me to be the Secretary of said Northwestern Portland Cement Company, and the Secretary of said meeting of said stockholders of said Company, whose name is subscribed to said instrument as such Secretary, and they duly acknowledged to me that they executed said instrument as such Chairman and Secretary, respectively of said meeting, of stockholders of said corporation; and as President and Secretary respectively of said corporation; and on the same day personally appeared before me William J. Dingee, Edward McGary, W. C. Webb, A. F. Morrison and Frank A. Losh, known to me to be the Directors of said Northwestern Portland Cement Company, whose names are subscribed to the said instrument as such Directors and they severally acknowledged to me that they executed said instrument as Directors of said Northwestern Portland Cement Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of Cali-

fornia, the day and year in this certificate first above written.

(Notarial Seal) HENRY P. TRICOU,
Notary Public in and for the City and County of San
Francisco, State of California.

STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

WILLIAM J. DINGEE and FRANK A. LOSH,
each being duly sworn, each for himself deposes and
says: That said William J. Dingee is the President
of Northwestern Portland Cement Company, the
corporation mentioned in the foregoing Certificate of
creation of bonded indebtedness; and that Frank A.
Losh is the Secretary of said Northwestern Portland
Cement Company; that he has read the foregoing
certificate of creation of bonded indebtedness and
knows the contents thereof, and that the same is
true.

WILLIAM J. DINGEE,
President of Northwestern Portland Cement Com-
pany, a Corporation.

FRANK A. LOSH,
Secretary of Northwestern Portland Cement Com-
pany, a Corporation.

Subscribed and sworn to before me this 3 day of
November, 1906.

(Notarial Seal) HENRY P. TRICOU,
Notary Public in and for the City and County of San
Francisco, State of California. [459—151dd]

In the Matter of the Notice of Stockholders' Meeting of Northwestern Portland Cement Company to Consider Proposition to Create a Bonded Indebtedness.

State of California,

City and County of San Francisco,—ss.

E. C. LUCHESSA, of the said City and County, having been first duly sworn, deposes and says:

That he is, and at all times herein mentioned, was a citizen of the United States over twenty-one years of age; and is competent to be a witness on the hearing of the matters mentioned in the annexed printed copy of Notice of Stockholders' Meeting of Northwestern Portland Cement Company to consider Proposition to Create a bonded indebtedness; that he has no interest whatsoever in the matters mentioned therein; that he is, and at all times embraced in the publication herein mentioned, was the Principal Clerk of the printers and Publishers of the 'Recorder,' a newspaper of general circulation, printed and published daily (Sundays excepted) in said City and County.

That deponent, as such Clerk, during all times mentioned in this affidavit has had, and still has, charge of all the advertisements in said newspaper.

That Notice of Stockholders' meeting of Northwestern Portland Cement Company to consider proposition to Create a Bonded Indebtedness, of which the annexed is a true printed copy, was published in the above-named newspaper on the following dates, to wit: August 31st, 1906, September 7th, 14th, 21st, and 28th 1906; October 5th, 12th, 19th and

26th, 1906, and November 2nd, 1906, and further dependent sayeth not.

E. C. LUCHESSA.

Subscribed and sworn to before me this 2nd day of November, 1906.

CHARLES R. HOLTON,

Notary Public in and for the City and County of San Francisco, State of California.

‘EXHIBIT A.

NOTICE OF STOCKHOLDERS’ MEETING OF
NORTHWESTERN PORTLAND CEMENT
COMPANY TO CONSIDER PROPOSITION
TO CREATE A BONDED INDEBTEDNESS.

Notice to the Stockholders of Northwestern Portland Cement Company is hereby given that in pursuance of a resolution of the Board of Directors of said corporation, passed and adopted at a meeting of said Board, held at the office of the corporation in the City and County of San Francisco, State of California, on the 30th day of August, 1906, a special meeting of the stockholders of said Northwestern Portland Cement Company will be held at the office of the corporation, No. 1228 McAllister Street, in the City and County of San Francisco, State of California (the same [460—151ee] being the principal place of business of said corporation and the building where the BOARD of Directors usually meet) on Saturday the third day of November, 1906, at the hour of eleven (11) o’clock a. m. for the purpose of considering and acting upon a proposition for creating a bonded indebtedness of said corporation to the amount of two

662 *Standard Portland Cement Corporation*

million (2,000,000) dollars, in United States gold coin, to the end and for the purpose of providing moneys to acquire property construct and equip the company's plant and to pay the indebtedness of the company, and for other legitimate and necessary purposes; which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property both real and personal, now owned by the corporation, and which it may hereafter acquire.

By order of the Board of Directors.

Dated August 30, 1906.

FRANK A. LOSH,

Secretary of Northwestern Portland Cement Company.

Aug. 31-10 tF.'

(Endorsed): In the Superior Court in and for the City and County of San Francisco, State of California. Department In the Matter of the Notice of Stockholders' Meeting of Northwestern Portland Cement Company to Consider Proposition to Create a Bonded Indebtedness. Affidavit of Public in the 'THE RECORDER' of Notice of Stockholders' Meeting of Northwestern Portland Cement Company to Consider Proposition to Create a Bonded Indebtedness. Frank A. Losh, Secretary."

STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

FRANK A. Losh, being first duly sworn, deposes and says: That he is, and was at all the times herein mentioned, the Secretary of Northwestern Portland Cement Company, a corporation created, organized

and existing under the laws of the State of California.

That on the 2nd day of October, 1906, at the City and County of San Francisco, State of California, he addressed a notice of which copy is attached hereto and made a part hereof, to each of the stockholders of said Northwestern Portland Cement Company, whose name appears upon the Company's books between the 30th day of August, 1906, and the 2d day of October, 1906, both days inclusive, at such stockholders place of residence, and that the place of residence of each of said stockholders was at all such times known to affiant; and that affiant mailed said notice, in the case of each stockholder, to such stockholder so addressed by depositing the same on said 2nd day of October, 1906, in the United States Post Office at San Francisco, California with the postage thereon prepaid.

FRANK A. LOSH.

Subscribed and sworn to before me this 2nd day of Oct., 1906.

(Notarial Seal) ADELINE COPELAND,
Notary Public, in and for the City and County of San
Francisco, State of California. [461—151ff]

‘EXHIBIT B.

NOTICE OF STOCKHOLDERS' MEETING OF
NORTHWESTERN PORTLAND CEMENT
COMPANY TO CONSIDER PROPOSITION
TO CREATE A BONDED INDEBTEDNESS.

Notice to the stockholders of Northwestern Portland Cement Company is hereby given that in pursu-

ance of a resolution of the Board of Directors of said corporation, passed and adopted at a meeting of said Board, held at the office of the corporation in the City and County of San Francisco, State of California, on the 30th day of August, 1906, a special meeting of the stockholders of said Northwestern Portland Cement Company will be held at the office of the corporation No. 1228 McAllister Street, in the City and County of San Francisco, State of California (the same being the principal place of business of said corporation and the building where the Board of Directors usually meet) on Saturday the third day of November, 1906, at the hour of eleven (11) o'clock a. m. for the purpose of considering and acting upon a proposition for creating a bonded indebtedness of said corporation to the amount of two million (\$2,000,000) dollars in United States gold coin, to the end and for the purpose of providing moneys to acquire property, construct and equip the company's plant and to pay the indebtedness of the company, and for other legitimate and necessary purposes; which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property, both real and personal, now owned by the corporation, and which it may hereafter acquire.

By order of the Board of Directors.

Dated August 30th, 1906.

FRANK A. LOSH,

Secretary of Northwestern Portland Cement Company.

Aug. 31-10t F.' "

(Endorsed on back): "No 750 (Original). Certificate of Creation of Bonded Indebtedness of North-

western Portland Cement Company. Dated November 3, 1906. Filed in the office of the County Clerk of the City and County of San Francisco, State of California, this 5th day of Nov., 1906. H. I. Mulcrevy, County Clerk. By L. J. Welch, Deputy Clerk." [462—151gg]

“ARTICLES OF INCORPORATION.

of

STANDARD PORTLAND CEMENT CORPORATION.

No. 904.

C. F. Curry, Secretary of State.

J. Hoesch, Deputy.

STATE OF CALIFORNIA.

DEPARTMENT OF STATE.

I, C. F. Curry, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Incorporation of STANDARD PORTLAND CEMENT CORPORATION with the certified copy of the original now on file in my office and that the same is a correct transcript therefrom, and of the whole thereof. Also that this authentication is in due form, and by the proper officer.

WITNESS my hand and the Great Seal of State at office in Sacramento, California, the 25th day of February, A. D. 1907.

(Seal)

C. F. CURRY,
Secretary of State.

By
Deputy.”

“ARTICLES OF INCORPORATION
of
STANDARD PORTLAND CEMENT CORPORATION.

KNOW ALL MEN BY THESE PRESENTS:
That we, the undersigned, all of whom are citizens of the United States of America, and residents and citizens of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California.

AND WE HEREBY CERTIFY:

FIRST: That the name of said corporation shall be

STANDARD PORTLAND CEMENT CORPORATION.

SECOND: That the purposes for which it is formed are:

(1) To manufacture, buy, sell and deal in all parts of the world in cement and the products thereof, and in all materials and substances contained in the earth, or in whole or in part, manufactured from or compounded of any materials or substances so contained;

(2) To build, construct, hire, lease, buy, own, maintain, construct and operate works, buildings and offices for manufacturing and dealing in cement, and the products thereof, and for manufacturing and dealing in the other materials and substances above mentioned;

(3) To acquire, invest, and deal in, buy, sell,

hold, own, mortgage, hypothecate, lease, let, exchanged and improve, in all lawful ways, all kinds of real and personal property including [463—151hh] easements, water and water rights, and all kinds of rights and franchises, and bonds or other obligations of the United States of America, or of this or any other State or Territory of the United States of America, or of this or any other State or Territory of the United States of America, or of any municipal or political corporation therein or thereof;

(4) To acquire, own, hold and operate quarries, mines, ditches, pipe-lines, flumes, chutes, tramways, reservoirs, water works and electrical plants; and to generate transport, transmit, and sell water, water-power and electrical power;

(5) To charter, build, construct, own, lease, hire and operate steam, sailing and other vessels, and wharves, piers, and warehouses;

(6) To buy, sell, take, lease or otherwise acquire, own, inventions, licenses and patents, and all kinds of interest therein;

(7) To acquire by purchase, subscription or otherwise, and to hold, own, deal in, sell, assign, transfer, mortgage, pledge, and otherwise dispose of shares of the capital stock of, and any bonds or other evidences of indebtedness secured or unsecured, granted or issued by any other corporation or corporations, of this or any other State, Territory, or country, and to exercise all rights and powers of ownership, including the right to vote thereon;

(8) To borrow and lend money, and execute bonds, promissory notes, bills of exchange and other obligations and evidences of indebtedness of all

kinds, whether secured by mortgage, deed of trust, or otherwise, or unsecured;

(9) To mortgage, pledge and convey in trust all or any part of the property, rights, interests and franchises of this corporation and to pledge all or any bonds, promissory notes, bills of exchange and all securities of any kind, and all evidences of indebtedness, secured or unsecured, at any time owned by such corporation.

(10) To aid in any manner any corporation of which any of the bonds or other securities or evidences of indebtedness or stock are held by this corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or securities or evidences of indebtedness or stock;

(11) To engage in and conduct any other business incidental, necessary, useful or auxiliary to all or any of the purposes or business aforesaid.

(12) Generally to do and perform all things whatsoever that shall be necessary or proper for the full and complete execution of the purposes for which such corporation is formed, and the exercise and enjoyment of all its powers and franchises; and in general to engage in, undertake, transact and do all and singular the things which natural persons may lawfully engage in, undertake, transact and do other than those things which a corporation organized under the laws of this state cannot lawfully do without complying with the special provisions contained in titled II to XVI, both numbers included of Part IV, Division One of the Civil Code of the State of California. [464—151ii]

THIRD: That the place where the principal business of said corporation is to be transacted is and shall be the City and County of San Francisco, State of California.

FOURTH: That the term for which said corporation is to exist is fifty years from and after the date of its incorporation.

FIFTH: That the number of directors of said corporation shall be five, and that the names and residences of those who are appointed for the first year are as follows:

Names.	Whose Residence is at	
James L. Robinson	San Francisco,	California.
Walter Rothchild	"	"
Thomas D. Davidson	"	"
Joseph H. Mayer	"	"
Andrew F. Burke	"	"

SIXTH: That the amount of the capital stock of said corporation is Four million dollars (4,000,000) and the number of shares into which it is divided is Forty thousand (40,000) shares of the par value of One hundred dollars (\$100) each.

SEVENTH: That the amount of said capital stock which has been actually subscribed is Five Hundred Dollars (\$500.00) and the following are the names of the persons by whom the same has been subscribed:

Names of Subscribers.	Number of Shares	Amount
James L. Robinson	One	\$100.00
Walter Rothchild	One	100.00
Thomas D. Davidson	One	100.00
Joseph H. Mayer	One	100.00
Andrew F. Burke.	One	100.00

IN WITNESS WHEREOF, we have hereunto set our hands and seals this Twenty third day of February A. D. 1907.

JAMES L. ROBINSON. (Seal)

WALTER ROTHCHILD. (Seal)

THOMAS D. DAVIDSON. (Seal)

JOSEPH H. MAYER. (Seal)

ANDREW F. BURKE. (Seal)

Signed and Sealed in the Presence of:

STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

On this twenty third day of February in the year A. D. 1907, before me Hugh T. Sime, a Notary Public in and for the said City and County, residing therein, and duly commissioned and sworn, personally appeared JAMES L. ROBINSON, WALTER ROTHCHILD, THOMAS D. DAVIDSON, JOSEPH H. MAYER, and ANDREW F. BURKE, known to me to be the persons whose names are subscribed to and who executed the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed [465—151jj] my official seal the day and year last above written.

(Notarial Seal)

HUGH T. SIME,

Notary Public in and for the City and County of San Francisco, State of California.

Filed in the office of the County Clerk of the City and County of San Francisco, State of California, this 23rd day of Feb. A. D. 1907. H. I. Mulcrevy, County Clerk. By L. J. Welch, Deputy Clerk.

City and County of San Francisco,
State of California,—ss.

I, H. I. MULCREVY, County Clerk of the City and County of San Francisco, State of California, do hereby certify that the annexed is a full, true and correct copy of the original articles of incorporation of STANDARD PORTLAND CEMENT CORPORATION, and of the whole thereof now remaining on file and of record in my office.

WITNESS my hand and official seal this 23rd day of February, A. D. 1907.

(Seal)

H. I. MULCREVY,
County Clerk.
H. I. Porter,
Deputy Clerk."

Endorsed on back: "Certified Copy (By the Secretary of State) of a Certified Copy of Articles of Incorporation of Standard Portland Cement Corporation. Dated February 23rd, 1907. (Endorsed:) Filed in the Office of the County Clerk of the City and County of San Francisco, State of California, this 23rd day of Feb., A. D. 1907. H. I. Mulcrevy, County Clerk. By L. J. Welch, Deputy Clerk. (Endorsed:) Filed in the Office of the Secretary of State the 25th day of Feb. A. D. 1907. C. F. Curry, Secretary of State. By J. Hoesch, Deputy. Record Book, Page " [466—151kk]

Mr. DUNNE.—I will read into the reporter's notes the following historical facts connected with the directorate of the Northwestern Portland Cement Company as shown by the minutes. The original

directorship consisted of W. C. Webb, Edwin Schwab, R. M. Sims, R. M. Moore, A. F. Morrision,—W. C. Webb resigned November 7th, 1906. Edwin Schwab, R. M. Sims, R. M. Moore, resigned October 25th, 1906. A. F. Morrision's position declared vacant November 8, 1906. Edward McGary, vice Schwab, resigned November 23, 1908. Frank A. Losh, vice R. H. Moore, resigned Feb. 8, 1907. Garrett W. McEnerney, vice A. F. Morrision, resigned Dec. 1, 1908. W. H. Cole, vice Edward McGary elected Dec. 1, 1908, resigned May 3, 1909. Samuel A. Boyd, vice Losh, resigned Aug. 21, 1907. Andrew F. Burke, vice Garrett W. McEnerney resigned May 3, 1909. L. F. Young, vice Boyd, resigned May 3, 1909. William J. Dingee, vice R. M. Sims, now serving. Irving A. Bachman, vice W. C. Webb, now serving. W. M. Cannon, vice Young, now serving. At the meeting October 25, 1906, of the Northwestern Portland Cement Company, as appears from page 17 of the minutes of that company, Mr. Edward McGary a stock holder was elected a director, in the place and stead of director Edwin Schwab, and Mr. Frank A. Losh was elected a director at the same meeting. Garrett W. McEnerney was elected a director on Nov. 8th, 1906; William J. Dingee was elected a director at a meeting on October 25, 1906. Irving A. Bachman was elected a director on Nov. 7th, 1906.

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.

(In Three Volumes.)

STANDARD PORTLAND CEMENT CORPORATION, a Corporation,

Plaintiff in Error,

VS.

ERNEST E. EVANS, GEORGE COLEMAN, and
PERCY W. EVANS, Partners Doing Business Under
the Firm Name of EVANS, COLEMAN AND
EVANS,

Defendants in Error.

VOLUME II.

(Pages 305 to 672 Inclusive.)

Upon Writ of Error to the United States District Court of
the Northern District of California, Second Division.

FILED

FEB 3 - 1913

No. 2235

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(In Three Volumes.)

STANDARD PORTLAND CEMENT CORPORATION, a Corporation,

Plaintiff in Error,

VS.

ERNEST E. EVANS, GEORGE COLEMAN, and
PERCY W. EVANS, Partners Doing Business Under
the Firm Name of EVANS, COLEMAN AND
EVANS,

Defendants in Error.

VOLUME II.
(Pages 305 to 673 Inclusive.)

Upon Writ of Error to the United States District Court of
the Northern District of California, Second Division.

(Testimony of John L. Howard.)

Q. Have any steps been taken by Evans, Coleman & Evans, or any of the parties interested with them, at any time, against the Northwestern Portland Cement Company, to your knowledge?

A. Not to my knowledge. As to whether Mr. Evans was willing or unwilling to take the Northwestern Portland Cement Company's bonds, I think he had a good deal of confidence in the Portland Cement business in the Puget Sound country at that time, and was quite willing all the time to make the investment. Yes, I think he was willing to take some of these bonds, I think he was very willing. I don't know just what amount of anxiety he might have had. From the beginning, Mr. Evans was anxious, both willing and anxious to take some of these bonds carrying the bonus stock. With his bonds, Mr. Evans got 100% of bonus stock. The number of shares that he actually received was, I think, altogether \$215.00 or 2150 shares. When first I began to talk with Mr. Evans about the Northwestern matter the scheme of Dingee and Bachman was to give 200%, the same as they gave with the Santa Cruz project. Of course, that made an attractive kind of proposition. Afterwards they changed their mind. But because Mr. Evans had signified his willingness to take these bonds after I got my promotion shares, I felt that he and the others who had taken bonds through our office, or through me were morally entitled to get the amount which Dingee and Bachman had first promulgated, so that out of 99,000 shares I gave Mr. Evans an

(Testimony of John L. Howard.)

additional 100% which accounted for \$45,000 more. Then, because Mr. Evans had brought this deposit to my attention and I in turn had brought it to the attention of Mr. Dingee and Dr. Bachman, thereby making possible the establishment of a cement industry at Kendall, I felt that Mr. Evans was entitled to some consideration beyond the mere stock bonus. I went to Dingee and Bachman and asked that we contribute to him for practically finding [243—92] this property for us. Dr. Bachman was not very willing, but I gave \$100,000 out of my allotment and afterwards secured from Mr. Dingee—I gave an additional \$100,00 out of my allotment to Mr. Evans, and afterwards secured from Mr. Dingee \$25,000 more, Mr. Bachman never gave anything. I gave this out of my allotment of the promotion stock, and Mr. Dingee gave Mr. Evans \$25,000 out of his part. I felt that Mr. Evans' work in the premises ought to be recognized. He found the man who owned the property.

Q. I will ask you if you testified as follows, upon the taking of your deposition, page 30, speaking of Mr. Dingee's plan to consolidate these various cement companies, I ask you if you were asked this question and if you gave this answer:

“Q. As a matter of fact was that intention of Mr. Dingee and Dr. Bachman's ever carried into execution? A. No, it fell down.”

Did you so testify?

A. Yes, and that represents the fact.

In the month of May, 1908, I received a power of

attorney from the Santa Cruz Company. This paper which you show me is a correct copy of that power of attorney.

Mr. DUNNE.—I offer this in evidence, gentlemen, by stipulation it may be left with the reporter to be written into his notes herein.

Mr. OLNEY.—Yes.

Thereupon said power of attorney was received and read in evidence in this cause, and is in words and figures as follows, to wit:

“POWER OF ATTORNEY TO ENTER INTO A
CONTRACT WITH THE ISTHMIAN
CANAL COMMISSION.

Know All Men by These Presents:

That the Santa Cruz Portland Cement Company, a corporation, organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City and County of San Francisco, State of California, does hereby make, constitute and appoint JOHN L. HOWARD of the City [244—93] and County of San Francisco, State of California, its true and lawful Attorney in Fact for it and in its name to enter into a contract with the Isthmian Canal Commission to furnish the supplies and materials in conformity with the specifications and materials in conformity with the specifications contained in their circular No. 420, dated at the office of the General Purchasing Agent, Washington, D. C., January 25th, 1908, and entitled ‘Invitation for Proposals to Furnish Portland Cement.’

GIVING AND GRANTING unto the said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite, necessary or proper to be done in the premises, as fully to all intents and purposes as this company could do if personally present, hereby ratifying and confirming all that said attorney shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the Santa Cruz Portland Cement Company has caused this power of Attorney to be executed under its corporate name and sale by its President and Secretary thereunto duly authorized, this 9th day of May, A. D. 1908.

SANTA CRUZ PORTLAND CEMENT
COMPANY.

By WM. J. DINGEE,
President.

L. F. YOUNG,
Secretary.

State of California,
City and County of San Francisco,—ss.

On this day of May, in the year One Thousand Nine Hundred and eight, before me,, a Notary Public in and for said City and County and State, residing therein, duly commissioned and sworn, personally appeared William J. Dingee and L. F. Young, known to me to be the President and Secretary respectively of the Santa Cruz Portland Cement Company, the corporation that executed the within and foregoing instrument, and to be the officers who executed the said instrument on behalf of

(Testimony of John L. Howard.)

said corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal at my office in the City and County of San Francisco, State of California, the day and year last above written.

.....,

Notary Public in and for the City and County of San Francisco, State of California."

Mr. DUNNE.—This is indorsed: "Copy. Power of Attorney. Santa Cruz Portland Cement Company to John L. Howard. Dated May 9, 1908."
[245—93a]

WITNESS.—(Continuing.) The facts in connection with this power of attorney are that during the week subsequent to the Saturday to which I referred, when the differences between the two offices concerning our sales contract, growing out of their nonpayment of our bills were patched up with Mr. Dingee, a luncheon was arranged at which I was to meet Dr. Bachman, and the atmosphere was to be cleared. At that interview it was decided that I should go to Washington, D. C., to represent the Santa Cruz Cement Company in putting in a bid for the contract to furnish cement to the Isthmian Canal Commission for the Panama Canal, and that power of attorney was given me so that I might exhibit it at Washington as a justification of my signing their name to any bid that was entered. Dingee, Bachman and myself were present at this luncheon. They wanted

(Testimony of John L. Howard.)

to try to get the contract and they wanted to get it through and so the suggestion was made that they would give me power of attorney to bid for them.

Q. I will ask you if you testified as follows upon the taking of the deposition, page 38, speaking of the Wenzelburger Report and the diversion of Northwestern Portland Cement Company's funds, line 6:

"Q. Did you have any conversation with Mr. Dingee about it?

A. I know where some of it went. Yes, I talked with Mr. Dingee about it.

Q. What, if anything, did he have to say to you on the subject?

A. I learned for example from the Wenzelburger Report that something like \$100,000 of Northwestern money had been loaned in some way to the Santa Cruz Portland Cement Company.

Q. It was an independent corporation, wasn't it?

A. Yes. The executive officers of both corporations were the same.

Q. Did you learn where any of the other money went?

A. Yes. I know that something over \$100,000 had been used to buy shares [246—94] in the Bellingham Bay & British Columbia Railroad.

Q. What ultimately became of those shares, do you know? A. I heard.

Q. From whom, please?

A. I learned from a statement that was sent to me from the Santa Cruz Company's office in November, 1908, giving a statement of that company's condi-

(Testimony of John L. Howard.)

tion, that these Bellingham Bay & British Columbia Railroad shares had been given as collateral.

Q. Collateral security?

A. To the American Bridge Company for a construction debt on behalf of the Atlantic Portland Cement Company.

Q. The Atlantic Portland Cement Company, if I am not mistaken, is a Pennsylvania corporation?

A. Yes, there were two of these—a Pennsylvania and a California corporation.

Q. The one that you refer to as owing this debt for which these Bellingham Bay shares were pledged as collateral security is the Pennsylvania corporation?

A. The California corporation.

Q. Who were at the head of the corporation?

A. I think the same people.

Q. Mr. Dingee and Dr. Bachman?

A. I don't know that personally, but I think so; they were the promoters."

Q. Did you so testify?

A. Yes, but I may have been in error as to the source of the information as to the pledging of these Bellingham Bay shares. I said there that that grew out of a report which I think Mr. McEnerney sent to my office at the time of Dingee's collapse. I may be mistaken as to the source of my information, but that is substantially correct other than that.

Q. Do you recollect when Mr. McEnerney sent that report to your office?

A. Oh, it was during the time of Dingee's troubles.

Q. During the latter part of 1908?

(Testimony of John L. Howard.)

A. Yes.

Mr. OLNEY.—May I ask a question here, Mr. Dunne? [247—94a]

Mr. DUNNE.—Yes.

Mr. OLNEY.—Q. Did you have any information as to the pledging of the shares of the Bellingham Bay and British Columbia Railway before that time?

A. No.

Mr. DUNNE.—Q. So that prior to the time when Mr. McEnerney sent to you this report in the latter part of 1908 you had no knowledge at all of the ultimate disposition of these Bellingham Bay Railway shares?

A. No, I had no knowledge of the internal affairs of the cement companies at all.

WITNESS.—(Continuing.) As to my recollection of any occasion when there was a conversation between me and Mr. Evans about those affairs, in which Mr. Wenzelburger's name came up, or the propriety of examining the books of the Northwestern Company came up, I think the examination grew out of expressed dissatisfaction in a letter from Mr. Evans about getting no replies to inquiries which he had made of Mr. Dingee; and my recollection is that I had suggested the [248—95] appointment of an accountant, through making him a share owner, to make the examination. I think I nominated Mr. Wenzelburger at the instance of our secretary, who knew him; I never met Mr. Wenzelburger. The reasons which Mr. Evans gave me in the matter of making this examination of the affairs of the North-

(Testimony of John L. Howard.)

western Portland Cement Company, were the suspension of work, and dissatisfaction growing out of that, and the general want of definiteness about plans. By this time he had learned first, and I found out afterwards that Mr. Dingee had stopped work and was shipping the material that was on hand at Kendall down to the Santa Cruz, which indicated that it meant for temporarily at least a virtual abandonment of the project. As to what month this conversation with Mr. Evans occurred in, I think it grew out of the letters. I could not distinguish what occurred in one conversation from another. We met very often in those days. The result of that was that Mr. Wenzelburger was detailed to make this examination, which he did; and following upon that examination Mr. Evans came to San Francisco. I think Mr. Evans came to San Francisco during the next month after Mr. Wenzelburger's report was prepared. I think he came in the month of March; it was not long afterwards.

Q. I will ask you if you testified on your deposition page 41, line 7:

“Q. Do you recollect what part of March it was when he came down?

A. I cannot recall the particular part of the month.

Q. When he came down, what occurred with reference to this matter?

A. We held a meeting in my office. There were present, I think, Ernest Evans, Sidney V. Smith, and George W. Spencer since dead, and the affairs were discussed.

(Testimony of John L. Howard.)

Q. What particular affairs?

A. The general affairs of the Northwestern, the unsatisfactory condition that these people's moneys had gone in, and that work had been stopped on the plant, and it was finally concluded that I should visit Mr. Dingee, and suggest to him the repurchase of these bonds that had gone through our office, carrying out a notion that I had expressed in a previous letter to Ernest Evans. I paid the visit, and was offered the note of the Santa Cruz Portland Cement [249—96] Company, with the indorsement of Dingee and Bachman. I reported back—

Q. (Intg.) Offered that note for what purpose?

A. For the repurchase of these bonds.

Q. You reported back, did you?

A. Reported back to these people, and advised them that in my opinion it would be better to take the notes of the Standard Company if it could be had. My reasons for that was, the Standard Company had practically cut its bonded debt in two, so I was informed by Mr. Dingee at different times, that the Santa Cruz Company had just started with a large bonded indebtedness, and that its product was so bad that the success of the company was not then assured. They adopted the suggestion, and I went back to Mr. Dingee and he adopted it. Then the bonds and shares were collected by our secretary. I had no further personal connection with the transaction after having arranged the matter with him, and the secretary of the company took them up and delivered them to the secretary of the Standard Port-

(Testimony of John L. Howard.)

land Cement Corporation, and from him obtained the Standard Portland Cement Company's notes—or corporation's notes, together with a certified copy of the resolution of the Board of Directors.

Q. Why did not Mr. Evans consult with Mr. Dingee directly on this occasion, if you know?

A. I suppose he might have done it.

Q. Was there any special reason why you should have gone?

A. No, except on account of the intimacy that existed between us; we were all together; Mr. Evans was a shareholder in the Western Fuel Company, Sidney Smith was a shareholder, Mr. Spencer was a shareholder.

Q. Then, there was no particular reason why you specially should have gone on this mission, was there?

A. They might have gone, but they asked me to do it, and I did.

Q. When they asked you, did they assign any reason why they wanted you to go?

A. No; I suppose they thought that because of the business relations between Mr. Dingee and myself that I was perhaps a better errand boy than any of them might have been."

Did you so testify? A. I did.

Q. And that statement of your transaction is correct, is it? A. As I recollect it.

I ceased to be a stockholder of the Northwestern Portland Cement Company just as soon as I surrendered back all the shares, the secretary of the North-

(Testimony of John L. Howard.)

western Portland Cement Co. sent word to our secretary that he had transferred them. [250—97]

Q. You turned back your stock just about the time of this Dingee interview?

A. I turned them in at the same time with all the other shares. In this interview with Mr. Dingee which has just been quoted from my deposition as given before the notary, I was representing these various bond holders. I went in their behalf. I do not think that Mr. Evans gave any reason himself why he wished to get rid of these bonds—have Mr. Dingee repurchase them, except the general one that he wanted to get out of his investment. He wanted his money. More or less complaints had been made to me by Mr. Evans concerning the apathy with which this enterprise was being developed and by me to the cement company. There were a number of these complaints toward the latter part, during the last half of 1907. Mr. Evans was complaining to me about the delay in establishing a plant and factory, and I was complaining to Mr. Dingee and Dr. Bachman constantly. These complaints began during the latter half of 1907, and they continued right along up to the time of the arrangement with Mr. Dingee in 1908, and were constant during that period. It developed toward the last that Dingee and Bachman had not told me the truth. I complained myself to Mr. Dingee and Dr. Bachman, and conveyed to them the complaints that Mr. Evans had been making to me, I think I would sometimes show them letters received from Mr. Evans. It was my prac-

(Testimony of John L. Howard.)

tice when these complaints were under discussion to tell Mr. Dingee and Dr. Bachman what Mr. Evans was complaining about and others and myself; and I kept Dingee and Bachman advised as to the nature of the complaints that were being made and by whom they were being made.

Q. If a complaint came along that was of a more striking or impressing character than any of the others, would you not also convey that to Mr. Dingee and Dr. Bachman?

A. As they came along no matter what their character [251—98] was. I conveyed these complaints to them sometimes in person and occasionally I did by note.

I was titular vice-president of the Bellingham Bay and British Columbia Railway for about a year. It was a nominal position. Mr. Taylor was President; he was the active man. I advised a little bit, but not very much. I went there and went over their line and made some suggestions to Mr. Taylor and to Mr. Page, the superintendent. I represented an interest in the matter. I had stock put into my name by Dingee. I think I know where the money came from which purchased that stock. I think he used Northwestern Portland Cement Company's money to buy the Cornwall interest. As to how many interests were really represented in the management of that railroad my recollection of what I was told is that D. O. Mills had a large interest. He was then living. He was represented by Mr. Taylor; and then there was the Cornwall interest, and there was the Hay-

(Testimony of John L. Howard.)

ward interest. It was the Cornwall interest which passed to Mr. Dingee, and he at that time represented the Hayward Estate; so the purchase of the Cornwall interest, as I was informed gave him control of the corporation.

Q. He really controlled about 2/3rds?

A. I do not remember the proportion. The Bellingham Bay and British Columbia railroad is 50 or 60 miles long. It runs from Bellingham Bay up towards the British Columbia line at a place called Sumas. That was the original line, what might be considered the Westerly half. The easterly half ran from there to a place called Glacier. The idea of Dingee's purchase of the Cornwall interest as he explained it to me, was this: That the road had been under consideration of purchase by some of the larger mines. The westerly half of the road was profitable. The easterly half was not. Kendall would be in the easterly half. He considered that if an industry like a cement plant [252—99] were established with its yield of tonnage it would make the easterly half profitable and therefore seem attractive to buyers. There were other railroads looking at the property, also. All that was wanted was the establishment of a constant tonnage on this easterly half to make the thing attractive to some other larger line. None of them wanted to retain possession of it. They preferred to sell. I went in as vice-president to sort of arrange the relationship between the cement company and the railroad. The plan in regard to the railroad in connection with the North-

(Testimony of John L. Howard.)

western Portland Cement Company was that a straight contract should be arranged between the cement company and the railroad company so that, in the first place, it would make the railroad attractive as a piece of property for sale and in the second place, if it were sold, the purchasing company would inherit this contract with the cement company and the cement company would be protected in the matter of rates for a long period of time. That plan fell down too; it died stillborn. The cement company was never established. But that was the purpose. I think I received a nominal salary as vice-president. I have forgotten what it was. The roadbed was in fair condition for a road of that kind. They had equipment enough for what business they were doing, but not enough for the increased volume of business that the cement company would draw on to it. My salary as vice-president was not so much as \$150 or \$175.00 a month. I have forgotten what it was—\$100 or \$125. They fixed it, I didn't.

No contributions were made by Dingee of Northwestern funds to the roadbed or equipment of this railroad except in this way. They, of course, had to build their spur track from the main line of the Bellingham Bay and British Columbia Railway into the factory site, and when Dr. Bachman was considering the order for the rails, I suggested to him that inasmuch as [253—100] the interests were largely identical, that the new rails had better be put into the main line of the Bellingham Bay and British Columbia Railroad and take up the old rails and re-

(Testimony of John L. Howard.)

lay them into the spur track into the factory site and charge the Bellingham Bay and British Columbia Railroad with the new rails, and give them credit for the value of the relaid rails and the difference would be worked out by the railroad company in grading and building the spur. I think that was done. I don't recollect any other instance of that kind. I don't remember the supplying of a \$10,000 locomotive to the Bellingham Bay and British Columbia Railroad Company by Mr. Dingee, or by the Northwestern Company. I never heard of that. The only transaction between them that I knew of was in connection with those rails.

Q. Do you recollect having any discussion with Mr. Taylor or with Mr. Page, the superintendent, or with Mr. Dingee concerning the ineffectual or inefficient character of the equipment of that road and the necessity for the Northwestern Company putting some of its funds into the betterment of the road?

A. I may have discussed with them the inadequacy of their rolling stock and the necessity if they were going to operate economically of changing some of their grades, and that sort of thing, but I do not think I ever advocated the use of Northwestern funds to go into the general business and equipment of the Bellingham Bay and British Columbia Railway. I did suggest this matter of the exchange of rails. As to what the Bellingham Bay and British Columbia Railway Company actually did in the matter of the laying of this spur track, I can't remember whether they carried out the suggestion that I made to them

(Testimony of John L. Howard.)

that the difference between the value of the two sets of rails should be worked out by the railway company in grading and putting in the spur, or whether that the grading was done by the cement company. I cannot tell you. Mr. Davis, who was the [254—101] resident engineer there would know about that.

Q. Could the Bellingham Bay and British Columbia Railroad be described as a business success, Mr. Howard? Has it ever paid a dividend?

A. Well, I don't know; I was not connected with it long enough; while I was a stock holder it didn't.

Q. Were you sufficiently familiar with its business affairs as vice-president to know whether it carried a surplus?

A. Well, I saw some of the operating sheets, not all of them, but I saw some. It was not a great commercial success during that period. I don't know the amount of its bond issue. I don't remember now. I was familiar with it then but I have forgotten. I could not tell you from memory whether it was as much as \$750,000.

Q. Do you recollect any conversation with Mr. Taylor or with Mr. Page, upon the propriety of increasing the bond issue of the Bellingham Bay and British Columbia Railroad?

A. Yes, I think there was a discussion of that kind, to increase its efficiency, and I think he had some talk with the firm of Rollins & Son. They declined to touch the proposition. I don't know whether the interest on the bonds of this railroad company was kept

(Testimony of John L. Howard.)

paid up. As to whether there was any complaint about that Mr. Taylor and the Mills Estate handled that in some way, I have forgotten the particulars now, but I think Mr. Taylor took charge of the interest question. I think the road owed the D. O. Mills Estate some money. While I might have been familiar with it at the time, it has passed out of my mind now. The controlling motive with Mr. Dingee in entering into this Bellingham Bay & British Columbia Railway was to be found in the proposed cement plant at Kendall. He represented the Hayward Estate at the time, and when the Cornwall interest was available he thought he could improve the value of the stock [255—102] of the railroad, and that the property would be improved by the establishment of this industry on the easterly end of the line. I think Mr. Dingee was the executor of the Hayward Estate and at the time when he took charge as executor of that estate, that estate already owned stock in the Bellingham Bay Railway.

Q. The purchase by Mr. Dingee of the Cornwall interest is to be traced to the proposed plant at Kendall?

A. They were in connection one with the other.

Q. It was in connection with that cement plant that he expected to give the eastern end of that railroad an efficiency and a value that it did not theretofore possess?

A. That is correct. There was then in existence no other outlet for a cement plant at Kendall except by the Bellingham Bay and British Columbia Rail-

(Testimony of John L. Howard.)

way, and none up to May, 1908. The Northern Pacific has a surveyed line across Kendall, but it is not built. As to whether there is any cement market of any consequence at any point along the route of the Bellingham Bay and British Columbia Railway, the cement plant would not be built for the local business along that line. The whole State of Washington is open to it; but along the line of the Bellingham Bay and British Columbia Railway, there is no cement market of any consequence; it is sparsely populated. You could very readily get the product of a cement plant from Kendall to where there was a live market; as, at Sumas, where it connects with the Northern Pacific Railroad. The freight rates of the Northern Pacific would be the chief factor in the problem. Then you can go to Bellingham and connect with the Great Northern Railroad or you can go to Bellingham and ship by water. In all these connections with other roads, the managers of the cement plant at Kendall would not be confronted by problems arising from freight rates on these other roads; you would get a freight rate made from your factory to all points in the State of Washington [256—103] by any *one* *them*. As a matter of fact, there was considerable negotiation on that very subject matter. I had that matter up; that was part of the functions I performed in his business. No result was arrived at in regard to the establishment of a freight rate, except in a general way; tentatively there was.

Q. So that whatever rate the manager of a cement

(Testimony of John L. Howard.)

plant at Kendall might have made with the Bellingham Bay and British Columbia Railway, he would have to take into consideration the freight rates of the connecting roads, would he not?

A. He would go to the main line and get them to name a through rate, which through rate would absorb the British Columbia rate. He would work from out in instead of from in out, except for water shipment to be made from Bellingham, in which case the transportation would be over the Bellingham Bay and British Columbia Railway only.

Q. Your own appreciation of the difficulties attendant upon the establishment of freight rates were such that you advocated water shipment altogether did you not, so far as you could?

A. Owing to certain local conditions to reach the other side of Puget Sound for example, where they had no rail connections; but nobody with a cement plant in that country can get along without the railroads; they must distribute their product there just the same as they do here. I do not know when the Bellingham Bay and British Columbia Railroad was built. It ran upon a regular schedule and it had a regular passenger trade. I think it had a regular freight schedule also. They had telegraph wires, but I do not think that it was customary or usual to use the telephone in connection with the trains there. I think they had a regular telegraph service.

Q. Do you know whether the road was operated, not upon a fixed schedule, but the trains were called as they were [257—104] needed?

(Testimony of John L. Howard.)

A. Oh, no, they had regular daily trains. I stated that the westerly half of this road was profitable but the easterly half was not, but I could not give now from memory the mileage. My impression is that it was about 23 or 25 miles from Bellingham to Sumas, running in a northeasterly direction, and from Sumas the road tends in a southeasterly direction. It make a sort of a "V." I think the distance is about the same to Glacier. The exact mileage I have forgotten. The western end stops at Bellingham which is a deep water shipping point.

No private code was ever established between me and Mr. Dingee, or between me and Dr. Bachman, or between me and Mr. Evans. I recall now in reading over some of this correspondence I did use our company's code in some telegram to Mr. Evans. It was not the usual practice. He had not a copy of the code. I don't know whether I used the word "statesman" for any purpose. If you show me the telegram I can tell you. Mr. Dingee never used the word "statesman" as a code word. He had a kind of joke that because I was a member of the City Council he called me "Statesman"; that is what that means; and if we find the word "statesman" in letters or telegrams it refers to the fact that I was a member of the Oakland City Council at one time.

Q. It refers to John L. Howard?

A. Perhaps so. That is the connection in which he used it with me. I have never seen before the telegram which you exhibit to me, dated July 17th from Mr. Dingee at New York to Dr. Bachman at

(Testimony of John L. Howard.)

Napa, California.

Q. I call your attention in that telegram to the word "statesman" in the sentence "settle statesman interests before I return": Whom does that word "statesman" refer to?

A. Well, I should say from the fact that he used that word in connection with me that it may refer to me. [258—105]

Q. Now, take this telegram of July 19th from Mr. Bachman in San Francisco to Mr. Dingee in New York, in which the word "statesman" appears, and reading the two telegrams together, I ask you whether you are the person referred to there by the word "statesman."

A. I may be, quite likely I am.

Mr. DUNNE.—I offer these two telegrams.

Mr. OLNEY.—We object to them. Well, are you sure they are authentic, Mr. Dunne?

Mr. DUNNE.—Oh, yes.

Mr. OLNEY.—Very well; no objection.

WITNESS.—But the latter telegram is not true.

Mr. DUNNE.—Well, that is another matter, Mr. Howard.

Thereupon said telegrams were received and read in evidence in the above-entitled cause, and are in the words and figures as follows, to wit:

The first one is dated "July 17"; it is addressed to "Dr. I. A. Bachman, Napa Junction, California. Why should we delay Sound Plant; get after Mc-

(Testimony of John L. Howard.)

Enerney for railroad bond; settle statesman's interest before I return; start Friday.

W. J. DINGEE."

The next one is dated July 19, 1906. It is addressed to "William J. Dingee, Esq., Waldorf Astoria Hotel, New York, N. Y. Have settled with statesman for nine thousand shares, he to provide three hundred thousand one for one. Puget Sound was incorporated Saturday. Everything under way except railroad which I feel we must have.

IRVING A. BACHMAN."

Q. I observe here the language: "Have settled with statesman for 9,000 shares." I ask you if that language does not refer to 9,000 shares of promotion stock which you received on the organization of the Northwestern Portland Cement Company.

A. I believe it does, but the statement in the telegram is not true. The whole of that telegram that refers to the "statesman" is [259—106] untrue.

Q. So, then, in the first place, there was no settlement with you for 9,000 shares?

Mr. OLNEY.—By Mr. Bachman.

The WITNESS.—By Mr. Bachman.

Mr. DUNNE.—Q. Or any interest that Mr. Bachman represented?

A. By Mr. Bachman. I referred in my deposition to the [260—106a] fact that Dr. Bachman paid me a visit long, long after the voluntary offer of Mr. Dingee to let me share equally with him in any promotion stock connected with the Puget Sound Company. This telegram of Dingee's, which I see

(Testimony of John L. Howard.)

for the first time, accounts for the visit of Mr. Bachman. He came and made this proposal, to which I did not assent, because it varied with the terms of the offers that Dingee had discussed with me, and Dingee was not here. As to who acted for Dingee here in this matter, during Dingee's absence, Bachman was talking for him in all these affairs. He was vice-president or president; their offices interchanged, one was president of one thing and one was vice-president of another.

Q. I will endeavor to interpret this language, Mr. Howard, and I wish you would advise me if I interpret it correctly: "Have settled with statesman for 9,000 shares"—that refers to 9,000 shares of promotion stock: "he to provide 300,000," meaning 300,000 worth of bonds, one for one. Is that a correct interpretation of it?

A. That is what the telegram means. That language is untrue. It was his proposal, without my assent. I never agreed to underwrite any quantity of bonds.

I do not personally know whether when the Northwestern Portland Cement Company was organized, any of the shares of its capital stock were issued to Irving A. Bachman, nor do I know from anything that Mr. Bachman or Mr. Evans or Mr. Dingee may have told me. I received \$900,000 worth of shares, which would mean 9,000 shares. I cannot remember the date, but approximately it was sometime in the early part of 1907. If the date is necessary, I think I could reasonably well fix it by reference to some of

(Testimony of John L. Howard.)

these letters exchanged between myself and Ernest Evans. I received those shares through a voluntary offer on the part of Mr. Dingee, in the early part of the Northwestern affairs, under [261—107] which I was to share equally with him and Dr. Bachman in whatever promotion share profits there might be in the promotion of the Northwestern Portland Cement Company, by reason of the work that I was doing in the north; that work did not include at that time any assistance that I might render in the way of selling bonds; nor did it later on, excepting in this way, Mr. Dunne, that after this offer on the part of Mr. Dingee, I had a visit from Dr. Bachman, and he threw out the idea that if I did not sell any bonds, \$600,000 of stock was to come to me. If I sold 300,000 of bonds I would get 900,000 in shares. Inasmuch as I never discussed this business with Dr. Bachman, and as it differed from the offer which Mr. Dingee made, I did not have any discussion with Dr. Bachman on that subject.

As to who was W. H. Cole, there was a young man by the name of Cole, whose initials I do not remember, who was an accountant or clerk or bookkeeper in the cement company's offices under Mr. Dingee. I used to meet him there.

As to the number of shares of bonus stock which Mr. Evans received with the bonds that we got, he got with the bonds what was called one for one, \$45,000 in stock, which would be 450 shares. In addition to that, I considered that, as he had brought the property to my notice, and that it had thus reached the

(Testimony of John L. Howard.)

cement company because of his influential work, that he was entitled to some consideration out of the promotion stock, and asked Mr. Dingee and Dr. Bachman to recognize his work in that regard; and Mr. Dingee was favorably disposed but Mr. Bachman was not. I gave to Mr. Evans voluntarily \$100,000 out of the shares that came to me; I got \$900,000 worth of shares; I gave him, in addition, \$45,000 to make good the difference between the two for one, which I told him originally would be done, and the one for one, to which Dingee and Bachman afterwards changed their scheme. Then, I got Mr. Dingee to give him an additional [262—108] \$25,000 out of his portion; but Mr. Bachman never contributed any. Mr. Evans received \$215,000 in shares, 2,150 shares, the par value being \$100.

Except by hearsay, I do not know who organized the Standard Portland Cement Company. I got that hearsay just generally. I knew that Mr. Dingee and Mr. Henshaw were the principal factors in it. I do not know any others. I did not get that information from any of the parties to this suit. I knew who was interested in it at the time. I do not know who organized the Standard Portland Cement Corporation. I do not know who organized the Santa Cruz Portland Cement Company. I know that Mr. Dingee and Mr. Bachman were chief factors in the organization; that is as far as my knowledge goes. I do not know who organized the Northwestern Portland Cement Company. The Northwestern Portland Cement Company was the outgrowth of suggestions

(Testimony of John L. Howard.)

that I was pressing upon Mr. Dingee and Mr. Bachman during the years 1904 and 1905 to establish a factory in the north, for the purpose of meeting local demands, and partly as an insurance for their California investments, meaning, that if other factories were started there, they might ship to California and interfere with the business here. They did not pay very much attention to these suggestions until the early part of 1906, when, because of my frequent visits to British Columbia, and my knowledge of the country on Puget Sound they commissioned me to try to find some cement deposits. I gave it some little attention personally when I was in the north, and I solicited the aid of some friends in Seattle, and finally of Ernest E. Evans of Vancouver. I think it was in June, 1906, that Ernest Evans took me out to a place called Sumas, and there I met a man named Reidle who had been prospecting for him and for Balfour-Guthrie Company to find lime deposits. He had one that he wanted to show. Evans, Reidle and I visited a deposit near the town of Kendall on the [263—109] line of the Bellingham Bay and British Columbia Railroad. After I saw a part of it, I telegraphed to Mr. Dingee, who immediately sent Dr. Bachman to the north. In connection with the promotion and organization of the Northwestern Portland Cement Company, I got to know in talks with Mr. Dingee just what the financial scheme of the Northwestern Company was. He proposed, as I remember it, to issue 2,000,000 of bonds and 5,000,000 of stock, and at its inception his idea was to put out

(Testimony of John L. Howard.)

on the basis of the Santa Cruz promotion, 200% of bonus stock with each bond. After he had such success with the Santa Cruz, he changed his plans to 100% of stock. I do not recollect anything further that he said on the subject of the financial scheme of this company. I do not recollect when it was that we had these conversations; they occurred off and on as we would meet during 1906, after the discovery of the deposits and the purchase by Mr. Bachman. I did not directly make any effort to interest any other persons in the Northwestern Portland Cement Company. I did, indirectly, in this way, that at the time that the Northwestern was being exploited the fame of the success of the Santa Cruz Company had gone up and down the Coast pretty well, and I did interest myself in the bonds of the Santa Cruz; people who had known about that and knew that I was in some way connected with the people who were putting through the Northwestern were anxious to get some of these bonds. Mr. Evans, for example, and Mr. Stockett, who was our mining engineer, when he heard about it he thought he would like to have a few. But to solicit bonds—the purchase of bonds, I did not.

I do not know the date when the Northwestern Company was organized, nor do I recollect generally the fact that it was organized in the fall of 1906. I think it is very likely that the company was organized in the year 1906. I do not know anything about the proceedings by which the Northwestern Portland [264—110] Cement Company's bond issue was authorized. I cannot recollect anything more than the

(Testimony of John L. Howard.)

year. I think it must have been in 1906, and it must have been after the month of July; but I did not know when it was organized. I do not know when the bond issue was authorized. I do not remember exactly when the company was organized. I do not know whether the bond issue was authorized within a brief period after the time of the organization of the company. I was not a director, and I had no part in the proceedings, and was not consulted about it. I have no knowledge at all of those dates. I cannot answer now whether any interest was ever paid on the Northwestern Company's bonds, to my knowledge. I do not recollect whether the coupons were paid or not. I could ascertain, but I have no memory either one way or the other.

I received 9,000 shares, but I could not tell when I received them. I do not recollect the date when the company was organized. I think they were sent to me at the office. It was sometime, I know, after the company had been organized. I do not know precisely when it was organized. I never heard of the bond issue in particular. I knew the bonds were ready, because I had drawn bonds for these different people. I do not recollect whether I had already received the 9,000 shares at the time when I knew that the bonds were ready and had drawn bonds. They sent the stock to me from the office. I do not remember that any stockholders' meeting of the Northwestern Portland Cement Company was ever held that I know of. I do not know anything about any stockholders' meeting ever having been held of the

(Testimony of John L. Howard.)

Standard Portland Cement Corporation subsequent to 1906.

Mr. BROBECK.—Q. Although the title to these lands to which we have referred was to be taken in the name of Mr. John L. Howard, Mr. Howard's testimony is to the effect that he was actually procuring that land to the use and for the benefit [265—111] of the Northwestern Portland Cement Company; is not that the fact, Mr. Howard?

A. No, sir; it is not. I took that land up for my own use and benefit, and I made an affidavit to that effect, and when I returned from that trip to the north I acquainted Mr. Dingee and Mr. Bachman with what I had done, and with the nature of the affidavit that I made in that connection, and I told them that they must not discuss that matter with me, and they never did.

Q. In other words, there was a gentleman's agreement between you that that would be kept out of the case and out of discussions until you got your title from the land office, and that then when you got your title from the land office you would turn the title over to them?

A. No, sir. That was not the intention. It was not my intention and purpose to procure 80 acres in the middle of those tracts of land and to hold it for my own use and benefit. I was holding it until I got the title, and then I would be free to deal with it. I never had any agreement with them about it, but that might have been my intention, and that is what I did after the title was given to me. I do not mean to tes-

(Testimony of John L. Howard.)

tify that it was ever my intention, while I was buying those other lands for the company up there that I was at the same time taking up 80 acres running right through the middle of those lands for my own use and benefit, and not with the intent of turning it over to that company. I never had any intention to take advantage of the company. What I want to convey to you is this: that having had to make an affidavit that I was taking it for my own use and benefit, from the time I signed that document I never discussed with Messrs. Dingee or Bachman the question of that land, or its title, until the time came to transfer it. that was long after I got the title. [266—112]

Q. I commend your cautiousness, Mr. Howard, but the purpose remain the same throughout.

A. That is right.

Q. Now, Mr. Howard, I exhibit to you this map of township 40 north, range 5 east, Whatcom County, Washington, and ask you to look at the colored sections in that and tell me whether they correctly represent the area of the lands of the Northwestern Portland Cement Company.

A. Well, I could not say from this map. There were maps in existence at the time which would enable me to identify it, but I think generally it looks right. There were some blue-prints in existence at one time that had the names on them.

Q. Now, I will ask you to take in connection with that plat this deed from yourself and wife to the Standard Portland Cement Company, and using that deed to assist you, I want you to state whether or not

(Testimony of John L. Howard.)

you find there the lines of the Northwestern Portland Cement Company correctly delineated on that plan.

A. This says the westerly half of the southwesterly quarter of 23. That is the westerly half of the southwesterly quarter. Each of these small squares represent 40 acres. So far as I know, this is a correct representation of the area of the lands of the Northwestern Portland Cement Company. Included in the marked portions of this plat there are 13 quarter sections; that would be 520 acres. I could not tell whether this blue-print which you exhibit to me is accurate. I don't know whether it is the correct representation of the holdings of the Northwestern Portland Cement Company at Kendall. If you will give me the deeds of the property and let me compare them with the map and give me the descriptions, I can tell you. This is not the blue-print to which I refer. There were some blue-prints which I had made and upon which I blocked out the pieces [267—113] when they were purchased. If I had one of those I could tell you. I remember that there were three different sections of land; one was bought from Peter Zender, that was farming land, in the bottom of the valley; that was 160 acres. Then there were 80 acres up on top; perhaps that is represented by these 4—20's. I bought that from Reidle, and I bought this from Zender. Then, there was a man named Mansard further up the valley this way. He had another 160 acres. That makes 400 acres. And then there was a subsequent purchase made, I think, by Dr. Bachman, through the Bellingham Bay Rail-

(Testimony of John L. Howard.)

road superintendent, but the quantity of that I don't know. I did not have anything to do with that. Mr. Evans drew on me, and I got the money and paid for it. I paid Reidle and I paid Zender with money furnished by Dr. Bachman. This represents the 80 acres for which I got the United States patent. With the exception of the pieces that, I think, were subsequently bought, I think that blue-print is correct.

Mr. DUNNE.—I offer in evidence this plat to which the witness has referred, and the blue-print also.

The MASTER.—The plat will be received as Complainant's Exhibit 6, and the blue-print will be received as Complainant's Exhibit 7.

Thereupon said plat and blue-print were received in evidence in this cause and the following are true copies thereof. (Here insert copies of said plat and blue-print.)

Mr. DUNNE.—I exhibit to you this letter, Mr. Howard, and ask you to examine it. You recognize this letter as a letter received by you from Mr. Taylor of the Bellingham Bay and British Columbia Railway, do you not?

A. Yes. He is the president of it.

Mr. DUNNE.—We offer this in evidence.

Thereupon said letter was received and read in evidence in this cause and is in words and figures as follows, to wit: [268—114]

“May 5, 1908.

“I have done nothing toward raising money for the road excepting to authorize Page to borrow \$10,000

(Testimony of John L. Howard.)

from Purdy with which to expend Seahome Dock 200 feet. Recently I visited Bellingham and took up with the Chamber of Commerce and the City Board of Trustees the question of obtaining a franchise skirting the water front at Bellingham from Seahome Dock to Squalicum Creek. We agreed to extend the dock and the Improvement Company agreed to rebuild Dock Street if this franchise were given us. Our plan has met with a little opposition but we feel that things will come out all right. In case we get the franchise it will be necessary to raise \$40000 with which to construct the road over the line of the franchise to operate it. We will be allowed two years to begin work, but it would be better to do it as soon as possible. We have bonds issued in the sum of \$659,000 and I would suggest that we raise the necessary funds by increasing the issue to an even \$700,000.

Very respectfully,

H. H. TAYLOR, President."

WITNESS.—(Continuing.) This letter does not recall to my mind any other facts in connection with the bond issue of the Bellingham Bay and British Columbia Railway, but it recalls the matter that is referred to by Mr. Taylor; according to that letter, the outstanding bond indebtedness of May 5th, 1908, was \$659,000. Mr. Taylor would be the very best authority on that subject instead of depending on my memory of three or four years ago. I know what that letter refers to; I remember that quite distinctly. I do not recollect what the amount of the floating indebtedness of the railroad company was

(Testimony of John L. Howard.)

at or about this time; if you suggest to me the sum of \$230,000 that would not assist my memory in any way. I know they had a floating indebtedness, but I cannot recollect the amount now. I do not recollect how much was due to Mr. Mills. I know he was carrying a lot of [269—115] it. As to whether he was carrying \$150,000, I do not remember the amount. I just remember the fact. I do not remember how much was due to the Black Diamond Company. I do not recollect that there was something due to that company. I do remember that Mr. Mills was carrying a part of that floating debt, so Mr. Taylor told me, as his agent. I have no recollection as to the Black Diamond Company. I cannot recall that now; no connection with it was rather a slim one.

Q. You were simply the representative of Mr. Dingee?

A. I went into the Board at his instance, but I conferred with him in the North more or less; sometimes with Mr. Taylor. In the course of my testimony, I have spoken of having made certain advances to the Standard Portland Cement Company and the Santa Cruz Portland Cement Company. As to those portions of this letter addressed by me to Mr. Cameron which deals with these acceptances, I cannot state whether those figures are correct; there is a long list there.

Mr. OLNEY.—We will admit that this statement of acceptance is correct.

340 *Standard Portland Cement Corporation*

Thereupon said statement of acceptances was received and read in evidence in this cause and is in the words and figures as follows, to wit:

STANDARD PORTLAND CEMENT COMPANY,

Date of Draft 1908.	Drawn in Favor of.	Amount.	When Paid by us, 1908.
May 28.	Associated Oil Company.....	\$12,000	June 28th
" 28.	"	7,000	" 28th
" 28.	Standard Portland Cement Co.....	30,000	" 28th
" 28.	Allis-Chalmers Co.	5,000	July 13th
June 15.	Standard Portland Cement Co.....	20,000	" 15th
" 30.	Oakland Bank of Savings.....	5,000	" 28th
July 27.	Standard Portland Cement Cor.....	25,000	Aug. 28th
Aug. 1.	Calif. Gas. & Electric Cor.. ..	10,000	" 28th
" 3.	Standard P. Cement Cor.....	20,000	" 13th
" 14.	" " "	15,000	" 15th
" 14.	" " "	15,000	Sept. 30th
" 17.	Mercantile Trust Co.	10,000	" 30th
[270—115a]		Amount.	
Aug. 24.	Standard P. C. Cor.....	10,000	Oct. 15th
" 31.	" " "	20,000	Sept. 15th
Sept. 31.	" " "	10,000	" 30th
Sept. 14.	" " "	20,000	Oct. 30th
" 14.	" " "	5,000	" 30th
" 14.	Bemis Bros. Bag Co.....	25,000	" 30th
" 24.	Standard Portland C. Cora.....	5,000	" 15th
" 24.	" " "	10,000	" 15th
Oct. 5th.	" " "	25,000	Nov. 18th
" 19th.	" " "	25,000	Dec. 15th
" 22nd.	" " "	15,000	" 17th
" 29th.	" " "	25,000	" 28th

(Testimony of John L. Howard.)

SANTA CRUZ PORTLAND CEMENT COMPANY.

Date of Draft. 1908.	Drawn in Favor of.	Amount.	When Paid by us, 1908
March 28th.	Santa Cruz P. Cement Co.....	\$10,000	April 13th
April 1st.	" " " "	25,000	" 28th
April 8th.	" " " "	15,000	May 13th
April 8th.	" " " "	19,000	July 13th
" 8th.	" " " "	20,000	June 15th
April 23.	" " " "	30,000	May 28th
May 4.	" " " "	10,000	" 13th
" 11th.	" " " "	5,000	June 15th
" 14th.	American Bridge Co.	20,000	" 15th
" 25th.	Santa Cruz Portland C. Co....	15,000	" 29th
June 15th.	" " " "	20,000	July 15th
" 29th.	" " " "	25,000	" 28th
July 13th.	" " " "	20,000	Aug. 13th
" 17th.	Allist Chalmers Co.....	5,000	Aug. 13th
" 27th.	California Gas & Elec. Co.....	10,000	28th
Aug. 1st.	Santa Cruz Portland C. Co.	30,000	13th
" 12th.	" " " "	30,000	Sept. 14th
" 25th.	" " " "	50,000	" 30th
Sept. 10th.	" " " "	25,000	Oct. 15th
" 17th.	" " " "	10,000	" 30th
" 19th.	" " " "	10,000	" 30th
" 19th.	" " " "	5,000	" 30th
Oct. 1st.	" " " "	20,000	Nov. 18th
Oct. 1st.	" " " "	15,000	Nov. 18th
" "	" " " "	15,000	Dec. 2nd
" "	" " " "	10,000	" "
" "	" " " "	10,000	" "
" "	" " " "	5,000	" "
Oct. 14th.	" " " "	25,000	" 15th

That is my signature on this letter which you hand me.

Mr. DUNNE.—I offer this letter in evidence.

Thereupon said letter was received and read in evidence and is in words and figures as follows, to wit:
[271—115b]

(Testimony of John L. Howard.)

“San Francisco, Cal., June 22, 1908.

W. J. Dingee, Esq.,
Crocker Building,
City.

Dear Sir: Referring to your telephone message of this morning: You can send here for a check for \$15,000 which will be drawn to the order of the Standard Portland Cement Corporation, but which the distinct understanding that it is to be repaid not later than Thursday of this week. We will absolutely need the money during the last half of the present week.

Yours truly,
JOHN L. HOWARD,
Presd't.

JLH.”

WITNESS.—(Continuing.) As to what are the facts in connection with that matter, I do not remember further than that the letter states. I don't remember that now. This was not a loan from me or the Western Building Material Company of \$15,000 to Mr. Dingee; the check was drawn to the order of the Standard Portland Cement Company. It was one of those transactions that I explained to you that sometimes we anticipated payments; but I told you that we were exceedingly cautious in the office never to let the cement companies get into our debt up until October, 1908. This might have taken the shape of an acceptance. It is very much like the same transaction. We were helping him out in 1908

(Testimony of John L. Howard.)

or helping the cement company through him as those acceptances show.

I can identify this letter which you show me; I remember that, and I identify this other letter also. I remember that.

Mr. DUNNE.—I offer these two letters, Mr. Olney.

Mr. OLNEY.—No objection.

Thereupon said two letters were received and read in evidence in said cause and are in words and figures as follows, to wit:

Mr. DUNNE.—The first of these letters is written upon the [272—116] letter-head of the Western Building Material Company and is dated "San Francisco, September 13, 1907, addressed to Mr. Edward McGary, Vice-President of the Standard Portland Cement Corporation, Crocker Building, City," and reads as follows:

"San Francisco, Cal., Sept. 13, 1907.

Mr. Edward McGary,

Vice-Pres'dt Standard Portland Cement Corp.,
Crocker Building, City.

Dear Sir:

When last in the North the question arose, whether the lime rock on the four Riedle Claims purchased by Dr. Bachman contained precious metals, as was the case in some other Rock in the immediate vicinity.

If so, these lands filed on under the Placer Act might be located as Lode Claims by other parties.

At my direction samples were taken from various places by Mr. Davis, our local Engineer, and by Mr. Dingee's direction I have had them assayed by A. A. Hanks.

I enclose a copy of his report, and will send a copy likewise to the Company's Attorney, C. W. Howard, at Bellingham for such action as he may think necessary for the protection of the Northwestern Cement Company's interests.

Will you please send to Mr. Hanks your Company's check, in payment of his bill, which is enclosed.

Yours truly,
JOHN L. HOWARD.

JLH."

Samples of Rock from each of the four claims located on the East half of the southwest quarter of Sec. 23, Township 40 North, range 5 East, as follows:

- Sample 1. Taken from lower west side of Olympia. Part of large surface rock.
- Sample 2. Taken from exposed ledge near center of Olympia.
- Sample 3. Taken from exposed ledge near the southeast corner of Olympia.
- Sample 4. Taken from exposed ledge near the northeast corner of Mt. Baker.
- Sample 5. Taken from the exposed ledge near the north central part of Mt. Baker.
- Sample 6. Taken from the lower west end of Mt. Baker from exposed ledge.

- Sample 7. Taken from the upper east end of Mt. Hood in the bed of a small stream.
- Sample 8. Taken from loose outcropping west of the center of Mt. Hood. [273—117]
- Sample 9. Taken from loose outcropping near lower west end of Mt. Hood.
- Sample 10. Taken from upper East end of Mt. Ranier from small outcroppings.
- Sample 11. Taken from small ledge on Mt. Ranier south of center where excavation was made for assessment work.
- Sample 12. Taken from the west central part of Mt. Ranier from small ledge and boulder where excavation was made for assessment work.

CERTIFICATE OF ASSAY.

ABBOT A. HANKS.

San Francisco, Sept. 12, 1907.

Laboratory No.	Mark.	Gold.		Silver.	
		Oz. Ton.	Value.	Oz. Ton.	Value.
40181	No. 1	.02	.41	Trace	
40182	2	.04	.82	"	
40183	3	.04	.82	"	
40184	4	.02	.41	"	
40185	5	.06	1.24	"	
40186	6	.02	.41	"	
40187	7	.04	.82	"	
40188	8	.02	.41	"	
40189	9	.02	.41	"	
40190	10	.04	.82	"	
40191	11	.02	.41	"	
40192	12	trace	.41	"	

The second letter is likewise written upon the letter-head of the Western Building Material Company, and is as follows:

“San Francisco, Sept. 19, 1907.

Messrs. Northwestern Portland Cement Co.,
Crocker Building,
San Francisco, Cal.

Dear Sirs:

Enclosed I send you the statement of account of G. C. Hyatt for \$851.75, properly receipted by him. This was recently paid by your check sent to my order.

I did not understand all the reasons and the mysterious moves of these lawyers, but there was an insistence that someone else should acquire Hyatt's title, and accordingly I named Joseph L. Schmitt, to whom Hyatt has made a deed, which has been recorded in Bellingham.

I will get a deed from Mr. Smith running to you and this you may hold without recording until that Northern atmosphere seems to be clear of trouble.

Mr. Howard of Bellingham also thinks that Mr. Schmitt should acquire my title, but as Mr. McGary is not familiar with all the twists and turns, I will be forced to give him a verbal explanation, rather than to write it.

Yours truly,
JOHN L. HOWARD.

JLH.” [274—117a]

The WITNESS.—(Continuing.) The Mr. Howard of Bellingham referred to in those letters is Mr.

(Testimony of John L. Howard.)

C. W. Howard of Bellingham. First taking up the letter about assays, there were two tiers of land, one at the top of the hill and the 80 acres on which I filed immediately below it, on the steep hillside. The first tier of land must be fully 1200 feet up. What was known as the Reidle claims, which were bought for the company at Bachman's dictation were on the top of the hill. The 80 acres I filed on were immediately between the Zender farm and the Reidle 80 acres, touching both—running parallel with the valley. At the time we were there the country seemed to be full of what might be called professional jumpers. This land had been jumped twice and I remember that one set of jumpers was frightened off by Mr. Purdy or C. W. Howard, I don't know which. And another set hung on and we called on Reidle to make good the claim he made at the time he sold, that it was free from any kind of attack. I was finally compromised with him, I think, by the Northwestern Company paying \$1,000 and Reidle \$1,000 to clear up the business and that was the end of the trouble. During the time of jumping there was a fear that if precious metal would be found on the Reidle claims a new set of fellows might come in under a new phrase of the land act. So at the instance of Mr. Dingee during one of his visits he asked Mr. Davis, the engineer, to make some samples, and they were made and sent to me, and this is the report.

[275—117b]

The other letter has reference to the 80 acres on which I filed. The Reidles now are done with, you

(Testimony of John L. Howard.)

remember. That is the part etched in black. That land was also jumped, after I filed on it, by a set of professionals. I think that Mr. Howard of Bellingham was the author of the protective measure to file on it, I think, as a Placer claim in some other name, while I still held to my location. I never sympathized with that movement but Mr. Hyatt was the man who carried through that part of it; that phase of the business with regard to my 80 acres. I think he finally made a deed to Joseph L. Schmitt, who was treasurer of the Western Building Material Company, but all that work came to naught because I finally got the patent under my original location by fighting them out. In clearing up these various difficulties about the land up there, Mr. C. W. Howard was acting professionally; he acted as attorney for the Northwestern Company; he acted for whomever may have filed on those 80 acres also. **As I say**, he was the author of this protective scheme following my location for filing on it as a Placer claim. He acted for Hyatt too. I think he went also on trips to Seattle because I was connected with the concern and because I was connected with the 80 acres, he went into the land office and made some inquiries about it. The Northwestern Portland Cement Company bought 160 acres from Mansard. Mr. Evans paid that and drew for it. Then there were 160 acres from Peter Zender that I bought and the 80 acres from Reidle. Now, if I am correct, Dr. Bachman subsequently bought through the superintendent of the Bellingham Bay and British Columbia

(Testimony of John L. Howard.)

Railway some additional land. There was more than that, but I am not able to state how much more. I know it was discussed, but I am not sure, Mr. Dunne, whether he carried it out. He wanted to own the country so as to keep people from building near the factory.

I was a stockholder in the Western Calcium Company [276—118] which was organized in 1906 or 1907. Mr. Dingee and Mr. Bachman were stockholders in that company. Mr. McGary was not. That company did not issue any bonds. Its plant was at Davenport in Santa Cruz County. That company is still in existence, but is not actively operating. It dealt in merchantable limes, but is not producing lime now. I don't know that there was much promotion about this company—just the people who owned it agreed to form it. As to the extent of the holdings of Mr. Dingee, Mr. Bachman and myself in that company, Mr. Dingee had a one-quarter, Dr. Bachman had a one-quarter and I had a one-quarter and they said that the Santa Cruz Portland Cement Company would take a one-quarter. The purpose was when the Cowell Portland Cement Company started to build a cement plant it created a little vindictiveness in the minds of Dingee and Bachman that being in the lime business they were going into competition in the cement business; so Mr. Dingee and Mr. Bachman were ready to open up a lime plant and burn the lime that they used at their quarry in Santa Cruz and thus cut out their rival. The 160 acres that Mr. Evans drew on me for were the Mansard

(Testimony of John L. Howard.)

160 acres. He paid for it and then drew on me for the amount. My impression is he paid \$100 down for the option and \$3,900 finally to complete the purchase. I said this morning that I could not recollect whether my 80 acres cost \$2.50 or \$5.00. It was the Government price. I don't remember what it was. I think it was \$2.50. I think it was \$2.50. I was not sure this morning.

Mr. OLNEY.—\$2.50 an acre.

Mr. DUNNE.—All right.

Mr. OLNEY.—That is correct, Mr. Dunne.

Mr. BROBECK.—We have a letter here from Mr. Howard at which price named is \$2.50 an acre.

WITNESS.—(Continuing.) Six thousand dollars were paid for Zender's Farm and \$6,000 paid for Reidle's claims. Mr. Evans told me [277—119] that he had sold out to Balfour Guthrie & Co. along in 1904 or 1905 his interest in certain properties in the north. He came here to do it. Those properties were situated opposite on the other side of the valley from the Reidle properties. As to whether Mr. Evans, before making that sale to the Balfour Guthrie Company, made any stipulation in which Mr. Dingee's name was mentioned, my recollection is that at that time negotiations either had begun or were about to begin with the Balfour Guthrie people for the acquisition by Mr. Dingee of their property, and I am quite sure that Mr. Evans told me at the time of his sale that he made a stipulation that the property should go ultimately to Mr. Dingee—something to the effect. Mr. Dingee's name was men-

tioned. I took up the negotiations with Balfour Guthrie then in Mr. Dingee's behalf. The stipulation was substantially to the effect that Mr. Dingee should have the first right to purchase. The negotiations here referred to are those which we have referred to heretofore in the course of this examination as having failed. The parties disagreed.

Mr. DUNNE.—I offer in evidence the correspondence contained in the deposition of the witness, Mr. Howard.

Mr. OLNEY.—They may be considered read, if you wish.

Mr. DUNNE.—Very well. I simply can hand them to the reporter, and he can incorporate them in his notes.

Mr. OLNEY.—Yes.

The MASTER.—You wish them to occur in the transcript at this point?

Mr. DUNNE.—At this point, yes, while the witness is on the stand and at this point of his examination.

Mr. DUNNE.—I offer in evidence all of Mr. Howard's deposition beginning with line 1 of page 59 thereof, and running to line 13 of page 247 thereof; and in addition to that, also, a letter which was read into the body of Mr. Howard's [278—120] deposition and which does not appear in the collection of letters at the end thereof, to wit: The letter of March 4, 1908, which begins on line 24 of page 50 of said deposition and ends on line 24 of page 51 thereof. That letter was read out of its or-

der. I am reasonably sure that it was not repeated in the body of the correspondence.

Mr. OLNEY.—Yes, that is correct, but I would suggest that it come in its chronological order.

Mr. DUNNE.—Very well.

Thereupon said correspondence hereinabove mentioned, together with said letter of March 4, 1908, hereinabove mentioned, was received and read in evidence in this cause and is in words and figures as follows, to wit: [279—121]

“May 3rd, 1906. J.

Dear Mr. Howard:

Our mutual friend, Mr. Thomas, of the Vancouver Gas Company, has asked me to write and enquire whether you would have any objection to having a present made to the Western Fuel Co., and registered in their name, of two fully paid and non-assessable shares in the Nanaimo Gas Co. It appears that the Electric Light Company, which is run by water, and the Gas Company, which is run on your fuel, have been cutting rates for a very long time, with the result that neither of them is doing any good. The Gas Company have come to the conclusion that they must extend, and they propose investing an additional \$15,000.00 to put in a main to supply the Newcastle townsite, and they think if it gets known that the Western Fuel Co. are shareholders, the Electric Light people will imagine that the company are backing them, and, consequently, will be having to agree on uniform rates. Mr. Thomas tells me that the idea is not to charge exorbitant rates, but

simply ordinary, reasonable ones, and he further states that if this extension is made and an arrangement is arrived at with regard to rates, that the Gas Co. will still further increase; and I shall be glad if you will let me know what reply I can give him.

Needless to say, up here we are all much concerned at the terrible catastrophe which has overtaken San Francisco, and I sincerely hope that your personal losses, and those of the Western Fuel Co., except for the inconveniences to business and the temporary check of same, so far as coal is concerned, will not be very serious, and that the Company will be caused no embarrassment. I am also extremely sorry that you have been done out of your holiday, temporarily, as no doubt you want one, and I hope that you will be able to get things into shape so soon that you will be able to take a much-needed rest. [280—121a]

I wrote you, care of Messrs. Balfour, Williamson & Co., New York, about the Sumas Cement property, to the effect that Portland replied that they did not think it would be advisable, in the present state of negotiations, to start on fresh lines; although they seem to be quite anxious that you should discuss the matter with Mr. Robert Balfour, in London. I have heard nothing from them since you left, but presume that they are going ahead as rapidly as they can with the friendly litigation.

I am leaving here in a few days for Calgary, where I have some important business, and may take the opportunity of running on to Edmonton and Winnipeg, as I have never been through this country, and

just now I am not particularly rushed with work.

Yours sincerely,

John L. Howard, Esq.,

340 Steuart St.,

San Francisco, Cal.”

“WESTERN FUEL COMPANY.

340 Steuart Street.

Coal:

New Wellington.

Dunsmuir Wellington.

Comax.

Beaver Hill.

Coke,

Building Material:

Standard Portland Cement.

Red and Repressed Brick.

Santa Cruz and Alabaster Lime.

Marbleite Hard Wall Plaster.

Carnegie Brick, Terra Cotta and Sewer
Pipe.

San Francisco, May 11, 1906.

Personal.

E. E. Evans, Esq.,

Vancouver, British Columbia.

My dear Mr. Evans:

I am in receipt of your recent letters, last dated
3rd.

‘CEMENT.’ I have had one or two desultory
conversations with Mess. Williamson & Lawson re-
garding the Sumas Scheme. They talk as though
that project might still be open, but said that there
were some complications in connection with people
on the other side, and these would have to be
straightened out in London. [281—121b]

I told them that we intended having a plant there,
that it would be better for all concerned if we could
work together, but that I preferred not to negotiate
the business with either Burns or Baillie as I thought
I was not gaited to run with them.

To-day I have seen my principal friend who re-

turned last night from the East, and I am now prepared to take the matter up in earnest, and if necessary will go to London to see R. B.

I have asked A. B. W. to look in at my office on the way from the Depot to his house, where B. G. & Co. make their headquarters, and will have a *definite* talk with him.

If I get enough encouragement I will go to London, and should I succeed there you will find a 5,000 barrel plant erected by us before one can be built by McMillan.

If you have anything further to *day* on the subject will you please write me under personal cover.

BRICK STOCK. I think I will declare an assessment.

Of course I have been incurring some indebtedness in getting the plant into shape for economically producing 100,000 Bricks per day.

With the present outlook for demand and prices I can speedily work it off, but while doing so dividends will be scarce, and if the debt be wiped out by a contribution of \$1.00 from the shareowners it will mean that profits will come sooner, and on a \$6.00 investment instead of \$5.00.

No one here would part with a share.

NANAIMO GAS STOCK: I knew that the Gas & Electric Companies had not been making money because we had been carrying both, and I wish I had received your letter sooner, for I met Mr. Hunter here last week, and might have been effective in patching up a peace on rates.

In our country the history of all such cases has

been that the Local Gas and Electric Companies have gone together.

Why can't a new Company be formed in which each of the two [282—121c] should take a share interest based on some proper appraisal?

If I go East vis Nanaimo, I might see if that be not possible, and at least will discuss with you the point brought up in your letter.

We have escaped loss wonderfully. None of our Bunkers or property were affected, but until to-day when we opened the office vault, we dreaded the destruction of our office records.

Happily the Ledger and Cash Book were found practically intact, and now we can readily establish our debit and Credit status.

The general destruction of chimneys prevents the use of coal, and we are sensibly affected in the volume of the coal trade but I think we will fully make that up in our Building Materials.

When I added these lines to our business, I had not idea of the value which has now been given to them.

CEMENT. We are getting 2,000 barrels per day.

July 1st this will increase to 3000 barrels.

November this will increase to 9000 barrels.

May 1/1907 this will increase to 12000 barrels.

RED BRICK.

100,000 from June 1st.

LIME.

25,000 barrels per month from June 1st.

PLASTER.

4/100 tons per month from June 1st.

and any quantity of Face Brick, Fire Brick, Sewer Pipe and Terra Cotta.

You see we have a larger equipment and variety than any concern in the State.

Yours truly,

JOHN L. HOWARD.

JLH." [283—121d]

“WESTERN FUEL CO.

318 California Street,

Telephone Private Exchange 558.

San Francisco, May 11, 1906.

E. E. Evans, Esq.,

Dear Mr. Evans:

Since writing you A.B.W. has called. I told him my scheme contemplated the purchase of the property and of course he and his friends could have the privilege of subscribing for the bonds getting \$2.00 in stock as bonus.

He seemed very solicitous about their firm's future in connection with the cement trade in the North. I told them that if the deal went thro' I would push to be Presdt; the Western Fuel Co. would be selling Agt. and B. G. & Co. could be made distributors and that this was as good a guarantee and as strong a position as I could promise.

They startled me with the news of poor Binny's suicide yesterday and under the feeling that one of the Seniros may come out from England the discussion is temporarily postponed until Cable news reaches them. If necessary I am prepared to go to England at once and if I am able to shake hands with

them you will see a factory put up in less time than it has taken them to consider it.

Yours truly,
JOHN L. HOWARD."

"87 Vernon Street.

Oakland, California, May 13, 1906.

E. E. Evans, Esq.,

My dear Mr. Evans,

If our friends B. G. & Co. can see their way clear to do business I am now in position to talk to a point & to build a factory of 5,000 bbls. capacity. The sticking points with them here seems to be that the proposal requires them to sell out, that they are not sure of their future position in the cement market to assure which was their reason for embarking in this scheme and some kind of complications on the other side in which outside parties are interested.

As to their relation to the new concern, I told them we would buy the property and give them opportunity to subscribe for bonds with the share bonus.

That the W. F. Co. would be the selling Agent of the new Company and I wanted if possible to get into position to be Presdt. and in such circumstances I told them that I could arrange the distribution through them. That was as much as I could promise, and that was going a long way.

That if needed I was willing to go at once to London to see R. B. and see if the complication could not be straightened out.

I was not greatly encouraged in this latter respect. that is, it was said that if I were going on other business, it might be well to take it up, but they did not

think it worth while that I should go especially for such purpose. [284—121e]

It was finally suggested that in view of Binney's death R. B. or A. G. might conclude to come here immediately and that it would be better to await cable advices from them. I am waiting, but I can assure you not very patiently.

If they will give me the option on the property they know or they ought to know that their and your interest would be as well cared for as by any one of their acquaintance.

If you feel disposed to help along my negotiation in any way that you can see open I will feel obliged.

Yours truly,

JOHN L. HOWARD.

I think I can make some money for both of you."

"May 15th, 1906. J.

Dear Mr. Howard:—

Thanks very much for yours of the 11th inst.

Cement: All that you write is most interesting, and I have taken the liberty of sending on, both to Burns and Baillie, extracts from your letters, and have written Baillie as per copy enclosed. I presume that A.B.W. is in correspondence with Burns; consequently, I ought to have something definite within a few days. If I cannot get anything definite, I shall put it up to them either to buy us out or we buy them out.

You will see from the copy of my letter to Bailie that McMillan has sold out his interest in the Roche Harbour concern, for, I understand, \$800,000.00. This information was given to me in strict confi-

dence and I absolutely rely on your not divulging any information that I give you. I understand that the Portland capitalists are Ladd & Tilton, Spencer Newberry having examined on their behalf. I cannot recollect the names of any of the San Francisco people, except that Gould's name was mentioned, and some very influential banker down there, who, I believe, was mixed up with Dingee in the Standard Company, and sold out. Among the New York group of capitalists is Mr. J. Rogers Maxwell, President of the Atlas Cement Company, and the Central Railway of New Jersey. Mr. Butchart met all these people at Roche Harbour, and took them over to his place. They all went down to San Francisco to finally close the deal; and when Mr. Butchart returns from Calgary, he *is* ~~be~~ furnished with details and given the chance of getting in on the ground floor, personally, as he worked very hard to get his Toronto friends to buy the property; but they thought the price was too high, and another thing they did not like buying only part of the property with the probability of having a lawsuit with Cowell. Butchart seems to think that they will be able to lay cement down in San Francisco just as cheap as either of your concerns; but his calculations as to steamer freight, in my opinion are ridiculously low and impracticable. His estimates of the cost of taking the cement from Roche Harbour to Seattle &c are also too low.

Brick Company: I note that you will probably make an assessment of \$1 per share for the purpose of putting the concern into first-class financial shape,

and in this I think you are very wise.

Nanaimo Gas Company: I note all you write with regard to this, and the first opportunity I get, will take the matter up with [285—121f] Mr. Thomas.

Western Fuel Company: It is very gratifying to hear that the losses to the company's property have been practically nil, and I sincerely hope that the losses on outstanding accounts will also be comparatively small, but presume that they will take a long time to collect.

I take it, from the tone of your letter, that you have not abandoned your European trip, and hope that we shall have the pleasure of seeing you, if you go via Nanaimo.

Yours very truly.

John L. Howard, Esq.,
San Francisco, Cal."

“WESTERN FUEL COMPANY.
340 Steuart Street.

“Coal:
New Wellington.
Comax,
Beaver Hill,
Coke,

Building Materials:
Standard Portland Cement.
Red and Repressed Brick.
Santa Cruz and Alabaster Lime.
Marbleite Hard Wall Plaster.
Carnegie Brick, Terra Cotta and Sewer
Pipe.

Confidential.

San Francisco, Sunday May 20, 1906.

Ernest E. Evans, Esq.,
Vancouver, British Columbia.

Dear Mr. Evans:

On my return yesterday, I received your telegrams May 16th and 18th, to which I replied as enclosed.

Since then I have your telegram of May 19th and letter of 15th with enclosure.

In my last interviews with Messrs. Williamson and Lawson, I told them, as I think I told you in Vancouver, that in this matter it was proposed to follow the plan of the Santa Cruz Company.

Share capital will be, \$5,000,000.

Bonds authorized, \$2,000,00 at 6%.

Bonds to be issued, 1,000,000 and these will carry a share bonus of \$2,000,00.

Balance of shares will go to promoters.

The proceeds of sale of bonds will be scrupulously devoted to the construction of a 5,000 barrel plant, estimated to \$1,000,00 balance of bonds will be held in treasury for expansion if needed.

The Santa Cruz Company's shares are now worth \$40/50.

Standard Portland Cement Company at Napa Junction was put through, viz.: [286—121g]

\$500,000 Bonds

2,000,000 shares.

Bonds carried \$1,000,000 of stock.

Out of earnings the plant has been increased.

Dividends (now 75¢ per month) have been paid for a year.

\$80,000 of bonds have been retired, and shares are now worth \$125.00.

As to Sumas scheme, we expect to subscribe for the bonds as will others, and while the property and plant will represent the bonds, the promoters' shares cannot be made valuable without giving equal value to the bonus stock, and this value will depend upon

the earning power of the concern, and that is largely dependant upon the management.

Without Dr. Bachman, I would be loth to undertake the project; with him I do not hesitate, for I am of the opinion that he has no superiors in the business, and few if any equals.

This is based on three years' experience in the harness with him.

Now, I offered you in cash more than your property has cost and an equal amount in bonds that carry shares, and you cannot say that as a mere investment it will not be a good turn for you and your friends.

At the same time you and they may join us in a bond subscription if you so desire.

I think this is the only combination that can face the new syndicate that is being organized by Frank L. Brown who lives opposite my home, and who recently told me that they would probably take up the Roche Harbour project.

Napa Junction factory now producing 2000 barrels per day. Will increase July 1st to 3000.

Santa Cruz factory will product 6000 barrels by December 1st, and Dr. Bachman is now in the east contracting for machinery to doubt that capacity by May 1st next.

If McMillan or Burtchart think they can break into our lines they will have to make and transport cement cheaper than we can do it.

Whether or not we take up the Sumas project, we will have a plant on Puget Sound, and before any other new plant can be built there.

Early decision on Sumas scheme is therefore important.

As soon as negotiations are closed, if they are closed, I am prepared to go north to look into all matters connected with the exercise of the option, and to get ready for business. [287—121h]

WESTERN FUEL COMPANY:

Our building materials department promises to so outstrip the coal feature of our business, that for better indication in the name, the better handling and financing, I am about to form the Western Building Materials Company to take over on July 1st, the Western Fuel Company's contracts on these lines, and carry on this part of the work independently. The outstandings of Western Fuel Company when collected will put it squarely on its feet, and I will start the new concern without working capital, but on the President's check and his Bank's assistance, letting the profits accumulate until they will take care of its outgo without banking assistance.

This I have done with the Howard Company, Western Fuel Co. and the cement account.

The Western Fuel Company will be the only share-owner of the new concern, and I'll make it win.

BRICK YARD:—

I will levy an assessment. Instruct B. G. & Co. to pay for your account when I call for it, *but not before*.

Yours truly,

JOHN L. HOWARD.

JLH."

“WESTERN FUEL COMPANY.

340 Steuart Street.

Coal:
New Wellington,
Dunsmuir Wellington,
Comas,
Beaver Hill,
Coke,

Building Materials:
Standard Portland Cement.
Red and Repressed Brick.
Santa Cruz and Alabaster Lime.
Marbalite Hard Wall Plaster.
Carnegie Brick, Terra Cotta and Sewer
Pipe.

Confidential.

San Francisco, May 21, 1906.

Ernest E. Evans,

Vancouver, British Columbia.

Dear Sir:

I have your telegram of date to which I reply:

‘Will buy half interest at price named without further examination. Confidential letter in mail covering other points.’

This means that if we buy and pay for Balfour, Guthrie & Co.’s interest, then as sellers they would have no interest in the proposed scheme. If, as intending investors they would like to take bonds with a share bonus, then if the project commended itself they would be at liberty to invest. [288—121i]

I am not sure that we would not prefer to buy the property outright, but in the present condition of things here it is quite difficult to get together in a hurry, but that would eliminate all questions about capitalization.

At any rate I believe in the scheme, and am willing to propose it to Western Fuel Company, to invest in it myself, and if my friends want to follow me, and many will want to do so, I can place my portion of the bonds.

The parties tackling this project are not novises.

Yours truly,

JOHN L. HOWARD.

JLH."

"May 21st, 1906. J.

Dear Mr. Howard:—

Cement Property.

I wrote you last on the 15th inst., since which I have yours of the 13th, and confirm my telegrams of the 16th and 18th, the former advising you of McMillan's sale, in case you had not heard of it, and in case it might affect your *programme*; the latter asking whether in the event of my being able to get the option to purchase B. C. & Co.'s interest for \$55,000.00 you would buy. The reason why I asked this was, because late on the 17th inst. Tacoma called me up *bu* phone, and although I could not hear over the wires distinctly, I understood that they were willing to deal with you, without any strings as to agency or would give us the option of selling out to them, or our buying them out, for \$50,000 and I wanted to be in the position to 'Call' them. The reason I mentioned \$55,000 in my telegram was, because a bonus of this amount, in shares, has been promised Mr. Reidle, the prospector we employed, and nothing *had* been said about it in the conversations; but my intention was, in the event of anything being done, only to charge you exactly what I paid.

On the 19th inst. I received a letter from Tacoma, dated 17th inst. copy of which I enclose and which explains itself. Later in the day I received your telegram making the definite offer, which was quite

clear, except that you said nothing about watered stock, and whether the bonds were to be sold at par; however, I immediately passed this on, by wire, both to Tacoma and Portland, adding the following:

‘Referring foregoing, consider are under no obligations Norths, and for our part have decided accept Howard’s offer, but if you proceeding English flotation we will sell out for \$75,000 cash. Please put us in position. Reply Howard Monday. If wish will meet you Tacoma or Seattle early on Monday.’

And on Sunday I received the following telegram from Portland:

‘Disposed negotiate Howard ourselves, have wired Frisco ascertain full particulars.’

This annoyed me very much, as I distinctly understood over the telephone that if you made a definite offer, as you did, they [289—121j] would at once cable to London and stop negotiations, and I am now trying to get Tacoma by telephone, asking for an explanation.

I duly received your telegram this morning, stating that you will buy the other interest for \$55,000; but as when you were here last, in course of conversation I understood you to say that before definitely committing yourself you would want to see the property yourself, I took the precaution of asking you, by telegram, before making the offer, whether you were perfectly satisfied with the property without examining it, and now await further.

As to the obligations to Norths,—As a fair-minded man I consider that there are none, except that they

should have the chance of coming in in the proposed new company on the ground floor, i. e. taking up bonds and getting bonus shares to a certain amount, to which I presume there would be no objection.

Yours faithfully.

John L. Howard, Esq.,

San Francisco, California."

"Oakland, 4th June, 1906.

dear Mr. Evans:

I trust that you arrived home in safety on Sunday as you planned. This is Monday P. M., and as yet I have not seen nor *hear* from any of my friends on the Sumas or on any other matter.

Perhaps they have located Col. Moles and are not now inclined to deal with me. Meantime our own parties remain in the field in Wash'n.

Doubtless you saw where the Cowells had secured an injunction against McMillan's disposal of Roche Harbour property.

Spent Sat'y P. M. at Brick Yard. Construction work is happily nearing the end, and will be finished during the month. Building operations have not yet really begun, and I think that generally they will be slower than many anticipated.

Yours truly,

JOHN L. HOWARD."

"Sunday, Oakland, June 10, 1906.

Dear Mr. Evans:—

In sending you the 'strictly confidential' telegram of yesterday and in writing this letter I am not breaking either a promise or a confidence, but I trust you will regard the injunction as at last parting we

agreed to post each other in so far as we could consistently do so.

On Friday P. M. I had a call from Mess. Bruce and Williamson, but before we could get down to discuss the Sumas scheme, a visitor came in, preempted a chair and 'sat out' the callers. [290—121k]

They sent their auto for me on Sat. A. M. and I spent an hour in their new office. There seems on the surface to be only one question, that of price for the property. I inferred that London had given some sort of discretionary power, and was informed that the price offered was too low, at the same time was asked what was the most that my friends would pay. I replied that the property was theirs to sell, that in my opinion if they had discretion they should exercise it, if they hadn't it might be well to cable and get a price that when they named it to me it should be an ultimatum and for us to accept or decline, and thus end the business. They were to cable in expectation of a reply on Monday before A.B.W. starts for Yosemite in the P. M.

I told them frankly that one of my two associates was in the east, the other I had seen for only a few minutes since my last interview with them, and that pending their having something to communicate that was definite, I did not want to run back and forth between the parties in interest like an errant boy.

The interview was pleasant enough, but I intend starting north as soon as I can shape things.

If I conclude with them as to Sumas, I will go there, otherwise, I will see what has been found by

370 *Standard Portland Cement Corporation*

the people that have been in the field.

The agony will be ended quickly after getting their reply, and I trust that they will not raise that price.

Yours truly,

JOHN L. HOWARD."

“WESTERN FUEL COMPANY.

340 Steuart Street.

Coal:

New Wellington.

Comax.

Beaver Hill.

Coke.

Building Materials:

Standard Portland Cement.

Red and Repressed Brick.

Santa Cruz and Alabaster Lime.

Marbalite and Hand Wall Plaster.

Carnegie Brick, Terra Cotta and Sewer Pipe.

San Francisco, June 15, 1906.

E. C. Evans, Esq.,

Vancouver,

British Columbia.

Dear Mr. Evans:

I am just in receipt of your letter of June 11th. On Monday last I briefly replied to B. G. & Company declining their offer, and considered that the end.

To-day I had a visit from Mess. Bruce and Lawson. They spoke of the brevity of my note, and renewed their offer of

\$150,000 cash

\$150,000 bonds.

\$300,000 stock. [291—1211]

which they said was about equal to what the property would net them under the English deal.

That they were not through with the complications in Europe and might have to settle with some of their associates, and that the property was worth

what they asked for it, and that our nonacceptance would force them to go on with their company and into the manufacutre.

They told me that they now controlled your interest. When I remembered that they paid you on basis of \$130,000 which meant a cost to them of about \$90,000 that you told me their English scheme was

Capitalization,	\$1,000,000,	1
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Property worth	150,000,	1
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they to get a bonus of \$100,000, of which they were to give \$25,000 to Mohls, and, as you thought, presumably would retain the balance, I failed to see how they were sacrificing much, inasmuch as they insisted on a subrogation by us to them of our selling contract.

If they intended going ahead, it seemed to me unnecessary to negotiate further.

If they intended selling, then I think I told them enough to make it positive that their views could not be met, and they should not insist on prohibitory terms.

Great stress was laid upon their position and ability to sell on Puget Sound against all competitors.

At any rate I start tomorrow night for the North, and among other things will look at your property if it be ready for inspection. We will have a factory and take our chances with them.

Yours very truly,

JOHN L. HOWARD.

W.

JLH."

“June 20th, 1906. J.

Dear Mr. Howard:

I wired you last night that our prospector turned up here yesterday afternoon. He does not appear to be at all impressed with the Rockport district, and the property he had in view turned out to be about two and a half miles from the railway, through very difficult country. He stated that the limestone property which almost adjoins the Kendall property, is very desirable in every way, and when he was in Bellingham, about a week ago, he arranged with a friend of his who is well acquainted with the owners, to work quietly for a bond for thirty to forty-five days, and on his arrival at Kendall to-night about six o'clock he expects to be handed the bond, in which case he will telegraph me, [292—121m] and I will telegraph you, and you can come over on Friday morning, as arranged. He has also sent up two prospectors to Boulder Creek, so probably you had better be prepared to spend Saturday night, and possibly Sunday night, up in that district, as no doubt you will want to take in the whole situation.

I shall be pleased if you will spend Friday night at my house; I am a grass widower just now. You can decide as to whether you will do this, or stop at the Hotel, when you come over.

Very truly yours,

John L. Howard, Esq.,
Nanaimo, B. C.”

“Nanaimo, June 25/06.

Dear Mr. Evans:

Dr. Bachman will leave on Tuesday P. M. for Vancouver. This means Thursday night at Seattle and

Friday at Vancouver. I will go over on Friday A. M. Boat and will wire Dingee to have Taylor instruct R. R. Supt. to have gasoline motor at Sumas on Saty. If I wire you that Dingee has made the arrangement can you take up the details by phone with the R. R. Supt. and have the motor at Sumas on arrival of C. P. R. train even tho' it may have to be sent up the night before. The question of the little extra expense, if there be any, cuts no figure.

Advise me what word you get from Reidle.

During my absence our friend Stockett is enthused up to the fusing point over the prospects of our timber.

Many thanks for all courtesies shown me during my stay with you.

Yours truly,

JOHN L. HOWARD." [293—121n]

“WESTERN FUEL COMPANY.

Miners and Shippers of
New Wellington Coal.

Nanaimo, B. C., June 26, 1906.

Office of the Manager.

Mr. Ernest E. Evans,

Vancouver, B. C.

Dear Sir:

To your wire about Reidle. I asked Dingee to have Taylor wire Supt. of R. R. place Motor Car at my disposal, and he replies today:

Doctor leaves tonight—Taylor wired Supt. railroad as follows:

Upon receipt of telegram from John L. Howard,

place at his disposal extra trains (sic) and extend every courtesy possible.

I have written Supt. that my friend is due Vancouver Friday, and that if his R. R. connections place him there on time, I would leave Vancouver Saturday A. M. for Sumas, asking that the Gasoline Motor be there to take us promptly to Kendall and that I would wire him definitely on Friday.

Now you will know how to reply to Reidle.

I will see to it that the Motorneer doesn't go away and leave us again.

Yours very truly,

JOHN L. HOWARD."

"June 27th, 1906. J.

Dear Mr. Howard:—

After writing you yesterday, I received yours of the 25th and am just in receipt of yours of the 26th inst.

I telegraphed Reidle yesterday, asking whether he could arrange to leave Portland by the 6:30 A. M. train on Friday, which is due at Seattle at 4:30 P. M. and then catch the train at 4:35 from Seattle arriving at Vancouver at 10:30 P. M. same night, and meet us [294—1210] at the C. P. R. station here at 7 o'clock on Saturday morning. He replies as follows: 'Will be there on time, as wanted.'

I telephoned to Mr. H. B. Paige, Superintendent of the Bellingham Bay & British Columbia Railway, who states that he has instructions from San Francisco to follow your orders with regard to the motor.

If Dr. Bachman arrives at Seattle on time on Thursday afternoon, he could catch the 4:35 P. M.

Great Northern train from there, arriving at Vancouver at 10:30 that night; but if he misses this, he will have to leave Seattle either by ss. 'Ramona' at 10 P. M. for Vancouver direct, or by the Great Northern morning train, arriving here at 3:45 P. M., as the 'Princess Victoria' lays over at Victoria on Thursday nights, for her weekly overhauling.

On your arrival on Friday morning, if I am not down at the boat to meet you, you had better hand your bag to a transfer man, and have it sent up to my house, 1075 Harwood Street.

Yours very truly,

John L. Howard, Esq.,

Nanaimo, B. C."

"July 4th, 1906. J.

Dear Mr. Howard:

I must apologize for having forgotten to telegraph Mr. Stockett yesterday that you were going over on the boat. The fact of the matter is, after leaving you I went up town and intercepted by one man and another, so that I quite forgot about telegraphing until about 4 o'clock, when, of course, it was too late. I trust you were not put to any inconvenience.

I saw Mr. K. Burns, the Agent of the Great Northern Railway Co. here, with regard to the rates the Railway Company had promised the Washington Cement Co., in the Skagit, and he has written a personal letter to Mr. Adams, the General Freight Agent [295—121p] at Seattle, asking him to let him know what these rates are, and he expects to have a reply in the course of a day or so.

Last night, about 10:30 Reidle rang me up from

Bellingham, stating that Mr. Ross, the Right-of-way Agent for the Electric Company, and also for the Northern Pacific Railway Co. in the Sumas district, was with him, and that he had spoken to him with regard to the claims which Van Balkenburg has under option, stating that this gentleman had considerable influence with the settlers in the district, and was much respected, and that he was willing to do all he possibly could for us. Mr. Ross came to the telephone and I told him that the claims were not absolutely necessary to us, but that if we solved the questions of power, rates, fuel, etc., we would take them, at a reasonable price, but that \$12,000.00 was altogether out of the question. He stated that he would be in Sumas this morning, and as he knew Van Balkenburg quite well, would sound him as to the exact position, and let me know the result. My idea is that when Van Balkenburg finds out that Maney is of no standing, he will be only too anxious to try and make a turn elsewhere, rather than lose his commission, and it may be advisable to use him. In the meantime, as already advised you, Reidle has sent up three men to jump the claims, and to do some work, and he expects to have something definite by Thursday, when, if it is necessary, I will go off to Bellingham by the 4 o'clock train that day, or will take the morning train on Friday.

Yours faithfully,

John L. Howard, Esq.,
Nanaimo, B. C.

I find Maney is the contractor for the dam on the

Skagit, which has gone out twice, and I fancy is a friend of McMillan's." [296—121q]

"July 3d, 1906. J.

Dear Mr. Howard:—

I received a telephone message from Reidle this afternoon, stating that representatives of the owners of the Lime ledge, had come down, and that they were prepared to sell, and that their price was \$12,000.00, ten per cent down, and the balance as soon as the deeds were made out. Under the circumstances, my opinion is that we should let them rest for the time being. In the meantime, Reidle has direct proof that only \$250.00 worth of assessment work has been done on the claims, whereas \$900 worth should have been done and he has sent up three men to jump the claims, or re-stake them in some other names, and do some assessment work, as he feels sure that by taking this action the owners will only be too pleased to sell on reasonable terms, rather than take the risk of a suit; and anyhow, my opinion is, that if the proper amount of assessment work has not been done, it would be advisable to make a fresh application, so as to prevent anybody else interfering. Reidle stated that Reid and a friend of his are quite willing to sell out on a basis of \$8,000, but that the other partners want \$12,000.

As promised, I enclose copy of letter from Mr. London, dated St. Paul, September 15th last. to Balfour, Guthrie & Co., Portland.

Yours very truly,

John L. Howard, Esq.,

Nanaimo, B. C."

“WESTERN FUEL COMPANY.

Miners and Shippers of
New Wellington Coal.

Nanaimo, B. C. July 4, 1906.

Officer of the Manager.,
Ernest E. Evans, Esq.,
Vancouver, B. C.

Dear Mr. Evans:

Late this afternoon I am without the expected wire from Dr. Bachman, although it may yet come.

After you receive this could you get into communication tomorrow with Reidle, and see if he could, without prejudice to the cause, leave Bellingham on the noon train, and ride back with me from Nanaimo to Bellingham so that if a plan of campaign must be laid out, it can be arranged deliberately and not under pressure for want of sufficient time.

I infer that the raise from \$7,400 to \$12,000 is upon our assumed anxiety to get that property and the Syndicate with their option holder may get a fooler. It isn't quite clear to me why on top of this raise Reidle restakes and commends development work, unless it be to hold the thing level until the Sumas Option expires July 15th, and then treat with the original on the basis of \$7,400. At the latter price, with the atmosphere cleared of difficulty, there will be no trouble about the price or the assessment work.

Yours very truly,

JOHN L. HOWARD.” [297—121r]

“July 11th, 1906. J.

Dear Mr. Howard:

For your guidance, Reidle turned up in the office yesterday about 4 P. M. and appeared somewhat excited. It seems a Mr. Copp, from Balfour, Guthrie & Co.'s Tacoma office, arrived at Bellingham, on yesterday morning's boat, and immediately hunted Reidle up, to endeavor to find out what you were doing. He found out that you had bonded Zenda's farm, and had also made application for a Timber claim. He then went up with Reidle to Dorr & Hadley's office to ascertain if they knew anything, and to get rid of him Reidle told him that he was going to Vancouver to see his sister in law. This morning when I arrived at the office, Mr. Copp was here, and he stated that Patullo, of the Tacoma office, had sent him up to Bellingham to find out what you were doing, and also to come and see us. He stated that he heard you had bonded Zenda's farm, and applied for a timber claim, and were negotiating for limestone properties which were under bond to Mr. Maney. He appears to know nothing about Reidle's claim. I told him that we had nothing to disguise, that I had written Mr. Burns some time ago that I had taken you over their properties, and about ten days ago Dr. Bachman went over them, also to see the limestone claim under bond to Maney. He states that he cannot understand why you bonded Zenda's farm, except there is some lime on it, or that you think it desirable that the property should be included in Balfour's property. He questioned me very closely about the Maney property, but I told him you had

refused to buy it, and he is going away today, having made up his mind that when you return to San Francisco you will reopen negotiations with them. He states that Reidle confirmed the information about the Zenda farm, and the time claim; but apparently he has said nothing whatsoever about his own limestone claim.

Reidle states that he fears it will be almost impossible at this season of the year, to get a reliable engineer to do the work you instructed him to have done, and he wanted permission to send Zenda up to cut the lines, so that he could go home to Portland; however, I told him that this would not suit, that he must get hold of an engineer and have the work done, as instructed, under his supervision.

Apparently, the old fellow thinks he has done something he ought not to have done, in disposing of his claim.

Very truly yours,

John L. Howard, Esq.,

Nanaimo, B. C."

"July 18, 1906. J.

Dear Mr. Howard:

I received your telegram about 11:15 asking me to telegraph if the engineers' survey had located the lime deposit on Reidle's 80 acres, and immediately replied that I had not had a word from Reidle or anybody else since you left, although I had written and telegraphed him. I waited until 11:45 and telephoned through to the Byron Hotel, to see whether Reidle had arrived by the morning train, and was fortunate enough to catch him. He [298—

121s] advises me that the engineers have not only located the line on his property, but have located (judging from Reidle's explanation) identically the same ledge on your property, 250 feet below his line. He also states that they have located also on your property, a very large ledge of shale, which they estimate to be about 150 ft. wide, the quality of which he states is apparently good. The engineers have completed the survey for a twelve per cent grade trail up to his claim, through yours, and are now preparing maps showing the various *edges*, which will be ready some time tomorrow, and Reidle hopes to be able to bring them up by the train arriving here at 4 P. M.

This information, no doubt, will be very encouraging to you, but I presume it will make no difference in the application for the land, as, of course, you were quite unaware, when you made the application, that a ledge was there, although, of course, it was only reasonable to expect that it was.

Reidle states that owing to this discovery, there is no necessity whatsoever for taking up Austin's land. He also states that Van Volkenburg has secured a 60 days' extension on his option on the other claims.

Percy informs me that Pattullo went away on Sunday with the idea that you had simply taken up Zenda's farm, and made the application for the timber claim, as a safeguard, and he quite thinks that you have returned to San Francisco to renew negotiations with them.

Just after my conversation with Reidle over the phone, I received the enclosed telegram from him,

which was sent before the conversation took place.

Yours very truly,

John L. Howard, Esq.,

C/o Western Fuel Company, San Francisco,
California.

Work will be commenced on the trail on Monday—
labor is scarce on a/c of cutting hay.”

“WESTERN FUEL COMPANY.

San Francisco, July 19, 1906.

Ernest E. Evans, Esq.,

Vancouver, B. C.

Dear Sir:

I was very glad by the receipt of your long telegram of date, saying Surveyor had located lime ledge on the land bought from Reidle, also lime and shale on my 80 acres 250 feet below Reidle's line.

I presume the after-discovery of lime on land, upon which I filed for timber, will not endanger my position in that matter through permitting any of those smart Alecks to file on it for stone and timber or placer or lode claims.

This whole land business is so full of sharp turns that one may never feel absolutely safe unless he holds the U. S. Patent. I may conclude to wire you on this point.

Yours truly,

JOHN L. HOWARD. [299—121t]

JLH.”

“WESTERN BUILDING MATERIAL COMPANY.

340 Steuart Street.

Cement.

Brick.

Lime.

Terra Cotta.

Plaster.

Sewer Pipe.

Roofing Slate.

San Francisco, Cal., July 20th, 1906.

Ernest E. Evans, Esq.,

Dear Mr. Evans.

Please respect my injunction not to show or to divulge the contents of this letter to any one.

Today I met Dr. Bachman, and recited my doings in the north after he left us. He is pleased at your latest news regarding the finding of rock on my timber claim, but is greatly disappointed at the outcome of the talk with the power people, and I have again advised that he consider a steam plant and before contracting for it, when he next goes East, to visit Stone & Webster's Boston headquarters, and thresh the question out with the principals and drop these indefinite subordinates. I think he will do this.

Respecting the 12 forty acre pieces belonging to Anderson. I told him that Reidle reported to you the probability of Horsts getting an option on Monday on the 480 acres for \$2,500, and because it involved the expenditure of so little money, I advised its purchase. He agreed.

If, therefore, Horst succeeds in getting the option at this price, and Craven finds that the properties are free of incumbrance, you might purchase in the

name of Irving A. Bachman, and draw on me, and it may be well to pursue the same course that we did in the Zender matter by escrowing the deed and the money until publicity will be harmless.

Mr. Dingee will leave New York on Friday and will return on Tuesday. Either on that day or on Wednesday, Dr. Bachman will come down from Napa, and there will be a joint meeting.

The Doctor told me that the corporation was organized and ready for business. 'Puget Sound Portland Cement Co.' and that the publication was made on Saturday last.

He outlined the plan, but until I see Dingee, I cannot tell whether it was decided upon at their last meeting or whether he has it ready for submission to Dingee on his arrival. It is this:

Bonds authorized, \$2,000.00.

Stock authorized, \$5,000.00.

Factory, if equipped with steam plant, will cost \$1,500.00. In that case, it is proposed to sell \$1,500.00 bonds, and give as a bonus \$1,500.00 in shares.

This will leave \$3,500.00 for promoters, and of this my allotment will be \$900,000, provided I underwrite \$300,000 in bonds. [300—121u]

If I elect not to underwrite, then my allotment is to be \$600,000. This does not exactly agree with the spirit of my conversations with Dingee whose return I will await, and it is a change of plan from a bonus of 2 to 1 to 1 to 1.

I am expected out of my share to take care of you, and this I will do cheerfully when the deal is finally

closed, and at my next meeting with you, Bachman's explanation of this 1 to 1 plan is based on recent experience in floating Santa Cruz now selling at \$72.00 and Atlantic which he says he is buying at \$25 and that this bonus is big enough to carry the scheme.

What made me think hard when the proposal was made to me was that as I understand Dingee, I was to share alike with him and Bachman. The difference between the \$900,000 and the one-third of \$3,500,000 in certificates whose value must be subsequently determined, is not so fatal when one is dealing with such large figures, but I didn't like the condition attached that I underwrite \$300,000 of the bonds or take less.

However, I will thresh out these not all important points with Dingee alone.

I carried out my contract in the Santa Cruz scheme, and underwrote as many bonds as any of them. What I wanted done was that if there was any obligation to anyone such as there is to you, then these obligations should first be cancelled by taking out of the total promotion shares and splitting the balance, but I'll not quarrel over these details.

Now, assuming that Bachman's proposal should be the one finally accepted, and that I should undertake to place \$300,000 of the 6% bonds carrying a bonus of \$300,000. Do you want any, and if so, how many?

Bachman proposes insofar as he is concerned, to put his bonds and shares away, and not to let any out until the demand shall naturally make a market, then in so far as he is concerned he will sell bonds cutting down the bonus to not more than five shares and

gradually reduce it until he will obliterate the bonus. This he says he is doing with the Atlantic Company now.

When writing, please express to me your views as to how many bonus shares you think I should give you.

I have not yet seen any of the Balfour, Guthrie & Co. people, but understand that there are some evidences of displeasure.

Yours truly,
JOHN L. HOWARD.

JLH/EGOL.”

“Personal Copy for Mr. E. E. Evans.

WESTERN FUEL COMPANY.

San Francisco, July 20th, 1906.

Mess. Schofield Construction Co.,

San Francisco, California. [301—121v]

Dear Sirs:

I am associated with some parties who contemplate the erection of works in Washington requiring the constant use of 600 electrical horse power.

If they proceed they would guarantee to pay for 4,000 H. P. but will need the greater quantity.

While in Vancouver, I was introduced by a friend to Mr. John Hendy, a prominent and wealthy citizen of that place, who seems to be at the head of a scheme to utilize the large power of waters flowing from Stave Lake in British Columbia, a few miles north of Sumas, which is in Washington near the boundary line.

Mr. Hendy expected an Eastern Engineer about

July 15th to examine and report upon this scheme.

If your expert is now in Idaho and you cared to send him 'seeking' it might be that you could make to him an acceptable tender for the installation of the machinery and the construction of the line to the site of our proposed works near Kendall, as shown on the map sent with this.

We would be willing to contract for ten years, and to pay \$20 per year per H. P., and this volume of business from one concern should form the nucleus to which more could be added to form the basis of financing the project.

Another idea is this—At Nooksack Falls in Washington, not many miles from the proposed site, the firm of Stone and Webster is now developing 3,300 H. P. out of a possibly 12,000 available at that point.

Their Hydraulic Engineer and others told me that in the neighborhood there was plenty of water power to be had.

It might be that your expert, after looking over the *grdau* would consider it best for you to take up water rights, and without contract as a basis, finance an installation.

I am passing these hints for what value they may have, and if they interest you I might say there is need of speed, for if the enterprise goes on, and it *will speedily* decided, the power would be needed in about one year.

Yours truly,

(Signed) JOHN L. HOWARD."

"July 20th, 1906.

Personal.

Dear Mr. Howard:

I duly received your telegram last evening, through Mr. Stockett, reading as follows:

'Will the after discovery of limestone on my timber claim enable other parties to file as stone and timber, placer or quartz and interfere?

Please consult Reidle and *Macanze*.' [302—121w] The word '*Macanze*' I could not make out, and as Stockett states it is the word as received, I did not ask to have it repeated.

Mr. Reidle turned up in the office first thing this morning and I immediately discussed the matter fully with him, and confirm my telegram to you as follows:

'Reidle states the after discovering limestone will not affect you, however to be absolutely safe are sending him back to stake off four placer claims covering whole eighty acres. Do you wish me consult Randolph. Wire.'

There is no doubt in Reidle's mind and neither is there in mine, that the after discovery of limestone does not affect your position, as you applied for the land as a stone and timber claim, and made an oath on good faith that the land on question was chiefly valuable for the timber, which was an absolutely correct statement, and which can be proved by Zenda and Reed, in addition to Reidle and myself, as you know everybody was under the impression that there was nothing on it. However, to put your position beyond a doubt, I have arranged for Reidle to go

back on Monday and stake off placer claims covering the whole 80 acres, in the following names: Thos. R. Stockett, Theodosia Evans, D. W. Reidle, Sophia Reidle, commencing in the order named, from north to south. After putting in the stakes, there is no necessity to take any further action for sixty days, when the claims will have to be recorded, and assessment work to the extent of a trail to cost not less than \$40 to \$50 will have to be done; but before these sixty days expire, you will have proved up on your claim, and I understand the only additional oath you will have to make will be to the effect that you believe the land does not contain gold, silver, coal or other valuable minerals. In my telegram, I asked if you were not satisfied with Reidle's opinion, whether I should consult Mr. Randolph. If you wish me to do this, I can catch the steamer 'Ramona' tonight direct for Seattle.

I enclose plan made by Mr. H. C. Cupples, of 2505 D Street, Bellingham, who is a Civil Engineer, and U. S. Deputy Mineral Surveyor, for the State of Washington. Unfortunately, he has not drawn the ledge on Reidle's claim, however, Reidle himself has put a few pencil marks, showing where it is, from which you will see that it is well within his land. You will observe on the north end of your land, a creek. Reidle states that the engineer states that he estimates there were about 50 miners' inches of water running, and that you can easily get 800 ft. head. He also states that this water could be used for sluicing surface earth off the ledge. If these statements are correct (and I have no reason to doubt that they

are not) this is a very valuable discovery. Reidle says that there is a ledge of shale on your property which is estimated to be 60 ft. wide, and, as far as exposed, about 100 ft. high, at the place where the creek is marked, just about Mansard's property. There is also some rock on the southside of the ledge on your property, small samples of which I am forwarding under separate cover.

With regard to Austin's land—Reidle does not think that this is at all necessary, and so far Mr. Horst has been unable to get an option, as you will see from the enclosed letter from Mr. S. L. Jones to him.

According to the survey, it would appear to me that the [303—121x] Mansard land is of great importance. Mr. Horst has handed me the option on this property for thirty days from 14th inst., for \$4,000, he having paid \$100 down, to be applied as part purchase in the event of your taking the land up.

With regard to the trail—Reidle has arranged with a Mr. W. M. Smith, 203 Forest Street, Bellingham, to take a few men up, with their own tools, on Monday next, so as to commence work on Tuesday. He states that this man is quite competent and reliable; but before leaving for Portland, he will see that they get properly started.

I was much disappointed to find from Mr. Reidle that he has not procured a copy of Maple Falls paper containing the notice of application, as, of course, it is absolutely necessary for us to see that the witnesses' names are correct. I have telegraphed the proprietor of the paper to send me four copies of his

last two issues, and to send four copies regularly for the next sixty days, and as Reidle will not be leaving here until early on Monday morning, I hope to get them in time to check them over.

With reference to Anderson's land—the option, as you are aware, was promised, but so far Mr. Horst has not received the actual signed option, but he daily expects it.

Under separate cover, I have sent a few small samples of coal, which a man informed Reidle he owned, about six miles from Kendall. Reidle did not ask him any particulars.

Yours very truly,

John L. Howard, Esq."

"Oakland, July 20, 1906.

Ernest E. Evans, Esq.,

Dear Mr. Evans:

Anent our conversation about the sale of our northern properties, I feel that their value will be greatly enhanced by the report of the timber cruisers which will soon come to hand.

Last year some conversations occurred between Mr. Stockett and a Mr. Aldrich regarding the possibility of the C. P. R. either taking our coal or considering the purchasing of our mines. Stockett and Aldrich seemed to be quite friendly and confidential and Aldrich was represented as being a confidential man of Sir T. S. in the matter of coal.

You might see Mr. Stockett and learn what took place between them altho' at the time I fancied from what I learned elsewhere the C. P. R. was so deep in negotiations with J. Dunsmuir that they could have

had no serious intentions respecting our property.

Still, what you may learn from Mr. Stockett may lead to the belief that it is *work* while trying for an opportune time to feel some official pulse. The terms of payment might be made reasonably easy and a compensation might induce some proper person to work for the accomplishment of this deal. [304—121y]

I merely mention this so that you may have it in mind. There has been some talk of sounding Jas. Dunsmuir to buy it but his people have been so busy in decrying our property that no price which he would be willing to pay could prove acceptable.

I can get 25 shares Western Fuel Company at \$125 owned by our Cement Dept. Mgr. who is about to leave us to enter business and needs the money.

If you want it please send me a check for the amount and I will forward the certificate.

There is another party here owning about 1000 shares who recently hinted that he would sell at \$150. In case the stock could be had at \$125, would you care to join in a little pool to take it up, and if so, to what extent?

Yours truly,

JOHN L. HOWARD."

"WESTERN FUEL COMPANY.

San Francisco, Sunday Night,
July 22, 1906.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans:

I am just in receipt of your letter July 18th, and,

as formerly stated, I am of course very glad that lime has been discovered on my timber claim, although **any** information I had at the time of filing led me to believe that it had no value (outside its strategic position) excepting for timber, and very little for that. Please re-impress upon Reidle the necessity for a critical examination of the notice published in the Maple Falls paper, to see that in description and in the *spell* of witnesses' names, matters are in order, and free from attack in that quarter.

I understand that Mr. Bruce is fishing in the Santa Cruz mountains.

Mr. Dingee is due here on Tuesday.

Very truly yours,

JOHN L HOWARD.

JLH."

“(Personal)

Dear Mr. Howard:

Referring to your private letter of the 20th inst—I am rather surprised at the position Dr. Bachman has taken up with regard to promotion shares, and hope that you will succeed in getting Mr. Dingee to come around to your views. I certainly think, with you, that all obligations, such as those to me, should be cancelled by taking out of the total promotion shares, [305—121z] and then splitting the balance as you three may agree, in which case I think I am justly entitled to \$200,000 in shares, considering the high capitalization, and the large amount of money they have saved, entirely through my efforts. If Dr. Bachman's proposal as outlined by you, should be the one finally accepted, I think it would be fair if

you gave me \$125000 out of your \$600000 and, in addition, let me underwrite \$50,000 carrying \$100,000 in bonus shares, for my firm, as an investment. In addition to this sum, I might be able to place a few bonds carrying one bonus share among friends, but until the scheme is in definite shape and I can put it before them, I cannot guarantee any specific amount.

For your guidance, I had a telegram from Baillie on Saturday morning, stating that he proposed running up with his two daughters to see me, and I telegraphed stating that I would be pleased to see them, and inviting them to my house. They arrived yesterday, about noon and left today about noon. Unquestionably he came to get what information he could about what we were doing. He met Mr. Riedle on the steamer, who told him that he had sold out his claim to you for \$6000, and had got the cash. I told him that this was correct. He knew that Dr. Bachman had bought Zender's farm, and that you had filed on the 80 acres.

I told him that nothing would be settled until Mr. Dingee arrived back from New York, and he left with the impression that this property had simply been acquired as a 'bluff' to them, and firmly thinks that they hold the strategical position, and that it would be absurd for anybody to start a factory with 320 acres of land.

He wanted to know whether I wished to cancel my sale and come back with them, and stated that on his return to Tacoma to-morrow he was going to take the matter up with Burns and write San Francisco at once to reopen negotiations with you. I

told him that you wanted Bachman to take their property, and that Bachman said it was not necessary, but that if he could get it at a reasonable price, it would be advisable to take it to get rid of the menace.

Baillie is perfectly satisfied that both yourself and myself have acted in good faith, and he informed me that you positively offered \$150,000 cash for the property; consequently, if they have made an error in judgment, it is their own account. He feels confident that you will take their property.

Yours very truly,

John L. Howard, Esq.,
San Francisco, Cal.”

“July 23rd, 1906. J.

Dear Mr. Howard:

I have your three letters of the 19th inst, also yours of the 20th.

Electric current: I note there is no duty on this going to the United States, and have so notified Mr. Hendry, who is out of town for a day or two. On his return, I will take the matter up with him. In the meantime, for your guidance, Mr. Kennedy, the Consulting [306—121aa] Engineer, is now on the spot.

Your timber and stone claim:—I note you consider it inadvisable to be away, from San Francisco about the 17th of September and your inquiry as to whether you could appoint me, an alien, or somebody else, to prove up for you, and now await to hear the information you get on this point in San Francisco. I enclose copies of the ‘Maple Falls Leader’ of the 13th and the 20th inst., containing your application, and

also enclose copies of letters addressed to the editor, and to Mr. Randolph, pointing out that the names of Riedle and Reed are spelt incorrectly. The former will be in Maple Falls, himself, tonight, and will have the matter straightened out.

Mansard's 160 acres:—As advised, I hold the option of this in Horst's name, and have sent it back to him to have it endorsed over to Irving A. Bachman. This option, which, as advised, is for \$4000, of which \$100 has been paid on account, expires on the 13th prox. and I should be glad to know, in plenty of time, if I am to instruct Rose & Craven to examine the title, and, if found, correct, complete the purchase before expiration of the due date.

Anderson's 480 acres: I note that if Horst succeeds in getting an option for \$2500, and the properties are free from all incumbrances, I am to complete. I have not yet received the option from Horst, although Reidle advised me that he had been promised it, and it should have been sent on last week, as he had to get the signature of all parties. Horst states, however, that the owners insist on keeping the commercial timber, but I have written him to get this condition waived, and to send the option along, and will advise you of the reply. As you know, we saw no commercial timber on the ground, and if Horst cannot get their proviso with regard to this, waives, I shall be glad to know if I am to agree to their terms.

Yours very truly,

John L. Howard, Esq.,

c/o Western Fuel Co., San Francisco, Cal."

“WESTERN FUEL COMPANY,

San Francisco, July 24, 1906.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans: I am finishing the day by working at home, after having attended a funeral.

The word ‘Macanze’ in the cipher message was intended to mean ‘Wire me as soon as possible.’

I have examined the maps you sent in the light of the explanations in your letter, and we are indeed very fortunate while figuring only on the strategetic importance, to find that my eighty acres are so intrinsically valuable.

I am glad Mr. Horse has the option on the Mansard land, and I think I will be able to wire you tomorrow to take it, although Bachaman may then conclude that he does not need the 480 acres of Anderson land, in which case I will wire you.

By enclosed sketch, you will note that with Mansard’s land we will have 480 acres gradually spreading out in the valley toward the railroad, and there is such a thing as buying too much. Still, if the Doctor will overcome his prejudice against having them, the Anderson land, while not costing much, will give him all [307—121bb.] the area he will ever need.

Dingee is due tonight from New York, and I expect to meet him and the Doctor tomorrow. If the definite and favorable decision is reached at that interview, I will wire you.

Yours truly,

JOHN L. HOWARD.

J. H. L. (sketch attached).”

“July 26th, 1906. J.

“Dear Mr. Howard.

Cement property: I have yours of the 22nd inst, also your telegram of the 25th and 26th inst.

Mansard's land: I enclose copies of letters to Rose and Graven, *als* to Horse, for your guidance, and when I hear that all the papers are in order, will proceed to Bellingham to close the matter.

Anderson's land: I enclose copy of letter received from Horst, from which you will see that he has not yet secured the option, and that he now talks of \$3000 including the timber. This seems to me a bit of a hold-up. Of course, I can do nothing until I get the option, and your letter.

Timber and Stone Claim: I enclose copy of letter received from Mr. F. Randolph. The necessary corrections have been made in the 'Maple Falls Leader,' also in the Seattle Land Office, so I take it that all is now in order up to the present, and now await to hear what opinion you get in San Francisco before appointing an attorney-in-fact, to prove up for you.

Yours very truly,

John L. Howard, Esq.,
San Francisco, Cal.”

“WESTERN FUEL COMPANY.

San Francisco, July 26, 1906.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans:

I saw Messrs. Dingee and Bachman today. They authorized the purchase of Mansard's 160 acres at

\$4,000, and I wired you to buy in name of Irving A. Bachman, but that if Anderson's option be obtained, to hold it, meaning, until the Doctor next visits the north and passes upon the matter on the spot.

They seem keen to go ahead, and are awaiting some developments in the next few days.

Nothing of special interest transpired at the interview.

Yours truly,

JOHN L. HOWARD.

J. L. H." [308—121cc]

"July 27th, 1906. J.

Dear Mr. Howard:

For your guidance, I enclose copy of letter just received from Mr. Reidle. I understood him to say when here that the surveyors went over his claims and found that they had been properly located; however, I have written him again on this subject. In connection with the trail I presume now that the discovery has been made on your property, this is not necessary, although of course, \$100 worth of assessment work will have to be done on each claim, and recorded before the 1st of December.

Nanaimo Properties: I had a call from the people who are negotiating to sell the Nicola Coal Lands, who informed me that the French people I told you about, will in all probability be out here early in September. If they come, I will take the opportunity of mentioning the property to them, and if they think that they are likely to entertain it, arrange for them to go to Nanaimo but I think it would be injudicious to say anything to those people until they are actu-

ally on the spot. In course of conversation over the telephone today with Baillie he asked me whether I had heard anything from you about their property, and I told him 'No,' in fact, the other day I sent him the cutting from the San Francisco Daily Commercial News about the registration of the Puget Sound Portland Cement Co., and asked him whether this was McMillin's concern, or if not, did he know who it was.

Yours very truly.

John L. Howard, Esq.,

c/o Western Fuel Company, San Francisco, Calif.
Hendy is still absent."

"Oakland, July 27 P. M., 1906.

Dear Mr. Evans:

I am in rect. of your letters July 23, and am hastily replying because I am hurrying to catch evg. train for Reno where we have some gypsum interests; expect to return on Sunday. I saw Mr. Dingee only for a short time on Wednesday. Dr. was present, and I preferred to discuss some aspects of the Northern scheme when I am along with him.

I told you that of Brick Co's stock there were two parcels held outside of us.

5000 by a bank as pledges.

500 by H. L. Miller, former

Prest. who will soon leave for Nome to engage in banking. He paid his assessment today, and after some conversation finally told me he would sell his shares at \$5.—assessment paid. One of my friends wanted to take it, but I told him that you had bespoken some shares, and I would

first have to submit them to you. Kindly wire me your decision on rec't of this. I was at the yard this a. m. A few small details need finishing. Yesterday she cut 88,000 and we feel that when this new boiler within a few days gives the engine increased pressure, she will reach the 100,000 mark.

In haste,

Yrs.,

J. L. HOWARD." [309—121dd.]

"E. E. Evans, Esq.,
Vancouver.

I sold John Lawson today \$5000 Atlantic Cement Bonds, carrying \$5000 bonus in shares."

"July 28 1906. J.

Dear Mr. Howard:—

I have yours of the 24th inst., and confirm my telegram sent to Oakland today asking whether Dr. Bachman's middle initial was 'A' or 'M.' and you will see from copy of letter enclosed received from Rose & Craven, that apparently some other papers have been made out giving the initial as 'M' whereas your telegram and letter gave it as 'A.' I am now waiting to hear from you.

For your private guidance, I enclose copy of letter received from Baillie, with regard to the Puget Sound Portland Cement Co. which is somewhat amusing. I also enclose copy of my reply.

Yours very truly.

JOHN L. HOWARD, Esq.,
San Francisco."

“WESTERN FUEL COMPANY,

San Francisco, July 31, 1906.

Mess. Rose & Craven,

Bellingham, Washington.

Dear Sirs: Upon my return today from the mountains I find a telegram from Mr. Evans of Vancouver asking if the initial letter of Dr. Irving Bachman's name was A. or M.

This was answered during my absence, but it occurred to me that in some unaccountable way while in the north I had given his name as I. M. Bachman, and might have been guilty of this error when I gave Mr. Craven the name for making the deeds. I therefore wired you giving the correct name, and asking in case I had previously made this error, if you would please correct it.

Yours very truly,

Copy to Mr. E. E. Evans.

J. L. H.”

“August 1st, 1906. J.

Dear Mr. Howard:

I have to acknowledge receipt of your favor of the 27th ulto. offering 500 Central Brick Company's shares at \$5 per share, assessment paid, and confirm my telegram accepting this offer, and also instruction you to close for the 25 Western Fuel shares at \$125, and if possible to buy an additional 500 Central Brick Company's shares at not exceeding \$6, assessment paid, and now await to hear from you. If the transactions are carried through you will kindly put the Western Fuel Co's shares in the [310—121ee] name of Evans Coleman & Evans, and the Central

Brick Co's shares in Mr. Warner's name, whose initials and address you already have. As soon as I hear that the business is closed, I will arrange remittance.

Cement property:—I enclose, for your guidance copies of letters received from Rose & Craven and Mr. Horst, all of which explain themselves. I also enclose letter received from Mr. Hyatt of the Bellingham Bay Improvement Co. with regard to Mr. Maney.

I received a telegram late last night from Reidle, reading as follows: 'Trail is finished. Letter on road.' I also enclose for your guidance a rough report on the water power of the Lillooet Lakes. This report is made by Messrs. Hermon & Burwell, who were the discoverers of the water power which is not being used by the Vancouver Power Co., a subsidiary company to the B. C. Electric Railway Co. This may be of interest to you.

Up to time of writing, I have been unable to get anything definite from Mr. Hendry. He is expected back today or tomorrow.

Yours very truly.

Encls:

John L. Howard, Esq.,
San Francisco, California."

"WESTERN FUEL COMPANY,

SAN FRANCISCO, August, 1, 1906.

Ernest E. Evans, Esq.,
Victoria, British Columbia.

Dear Mr. Evans:—On my return from Nevada I find your letters July 26, 27 and 28.

I note the result of your interview with Mr. Stockett. Perhaps the difference between Nanaimo at the cost of delivery and that of Comox might overcome prejudice of opinion.

Western Fuel Shares: I offered them to you because you said you wanted some. There are buyers here and I will place them.

Brick Company shares: The assessment is not delinquent. I will take up the matter with our attorney and arrange to sell according to law.

I wrote you about 500 shares, but do not yet know what course the bank will pursue about the 5000 shares belonging to an insolvent, and which it holds as pledges. If they are to be had at public or private sale, I will wire you, but I will not pay more than \$5 plus the assessment, and if honorably possible, will get them for less. If you or your friends do not care for any of them, please indicate by wire and I will either keep them or place them with friends.

Mansard's land:—I note that title is in the name of F. M. and Louisa Watson. If Craven passes title, buy it and draw as requested.

Anderson's land: Should option come it will of course [311—121ff] be held until Dr. Bachman passes on the need of acquiring it.

Howard's land: I note the errors in the publication, and Randolph's remarks regarding the corrections.

Would it not be well to take steps to consolidate these claims so that assessment work done on one should be applicable to all?

Do you know what steps are necessary to make

this consolidation?

French people: I think your course is wise to postpone references until the parties get on the spot.

As to my filing, I am quite sure it was intended to be only timber, but Reidle is right, the notice says 'Timber and Stone.'

Today I lunched with Mr. Dingee, and on Thursday last I saw the Doctor at Napa factory. Have impressed upon both the need of a speedy decision. Both agree with me, and the Doctor is to be called here tomorrow, or Thursday for consultation, when I feel that the thing will be an *au fait accompli*.

They have been awaiting some information, which in my opinion is not a vital necessity.

I rehearsed with W. J. D. the proposal of Dr. Bachman regarding the scheme, and this will be made the subject of discussion at the meeting.

Mr. John Lawson paid me for five Atlantic Cement bonds. I gave him \$5000 in shares as a bonus, and he wanted to know if I would let him in on the Northern scheme. I said Yes.

Yours very truly,

JOHN L. HOWARD.

JLH."

"August 2, 1906. J.

Dear Mr. Howard:

I am just in receipt of your telegram stating that your letter about Western Fuel Stock stated the price was \$125, and not \$120. I immediately looked up the copy of the telegram, which I handed in to the stenographer, and find that it was sent from here cor-

rectly as you will see from the actual copy herewith. As previously advised you, the Central Brick Co's shares are to be put in to Mr. W. P. Warner's name, whose address is Langton Hall, Market Harborough, England.

Cement property: For your guidance, I enclose copy of letter received from Rose & Craven, from which you will see that the deeds for the Zender, also the Mansard lands, are now in order.

Electric Power: Mr. Hendry is still away, and will not be in active business again for two or three weeks. I called on his assistant today, who informs me that the consulting engineer, viz.: Mr. Kennedy, has gone east to look for an engineer to take charge of the whole work which is to go ahead right away, and they expect to have the dam ready early in the coming year. Mr. [312—121gg] Hendry is very anxious to take care of our requirements, but he cannot give us any definite reply for some few weeks.

Yours very truly,

John L. Howard, Esq.,
San Francisco, Cal."

"August 3, 1906. J.

Dear Mr. Howard:

I have to acknowledge receipt of your telegram advising that you have drawn on me for \$3125.00 for twenty-five Western Fuel Co.'s shares, which will be duly protected on presentation. I note that you will advise about the Central Brick Co.'s shares later.

Cement property: For your guidance I enclose

copy of letter received from Rose & Craven, and copy of my reply, from which you will see that I have made a sight draft on you in favor of the Bellingham National Bank for \$3900, the balance due on the Mansard land.

Yours very truly,

John L. Howard, Esq.,
San Francisco, Cal.”

“August 11, 1906. J.

Dear Mr. Howard:

Cement property: I enclose for your guidance copy of letter just received from Mr. Reidle, and you will kindly take note of what he writes with regard to the assessment work on his claims.

For your guidance I also enclose copy of letter received from Mr. Aman Moore, to which I propose replying that I have no interests, with B. G. & Co. and do not know what their intentions are.

“Yours very truly.

John L. Howard, Esq.,
San Francisco, Calif.

“August 14, 1906. J.

Dear Mr. Howard:

Cement property: I have received advice from Rose and Craven, that the \$3900 due on the Watson land was paid yesterday and they advise that they will get the deed and file it for record. I enclose account of disbursements made up to date, with vouchers attached, all of which I expect you will find in order, although you will notice a difference of 50c between the amount of Mr. Cupples' bill and the

408 *Standard Portland Cement Corporation*

amount actually paid. This 50¢ was an item that Reidle left out of his own account.

Yours very truly,

John L. Howard, Esq.,

San Francisco, Cal."

“WESTERN BUILDING MATERIAL COM-
PANY.

340 Steuart Street.

Cement.

Brick.

Lime.

Sewer Pipe.

Platser.

Terra Cotta.

Roofing Slate.

[313—121hh]

“San Francisco, August 15, 1906.

Ernest E. Evans, Esq.,

Vancouver, B. C.

Dear Mr. Evans:

I have your letter of August 11th, and have not been in position to write you with positiveness because of late days Mr. Dingee has been absent from the City a good deal and I have not been able to get with him and Dr. Bachman. The last word was that the Dr. intended sending his alter ego, Mr. Roseberry to Kendall, on Monday or Tuesday of this week, but I have not learned of his going, and will not be able to see Mr. Dingee until tomorrow. You have no idea how difficult it is to get about the city now and how hard it is to see business men scattered as they are, far apart.

The delay in decision has been caused by work on the other proposition about which I have hinted, and at last advices it looked very favorable, in fact,

almost sure of consumation.

Aman Moore: He called at my house last week with the proposal to establish a chain of factories beginning at Spokane and extending south to El Paso. As our interests are allied with the Dingee combination, I arranged for a meeting between Moore and Dingee, and have not since seen Mr. Moore. I said very little to him about the Balfour property at Kendall.

As to Reidle's letter to you of August 9th: If living and well I will be in Seattle on September 17th, to prove up on the timber claim, and I will then see to it that the necessary assessment work shall be done on my 80 acres, and as soon as I see Dr. Bachman, I will impress upon him the need of doing the same on the Reidle 80 acres.

Brick Stock: The sale for delinquent assessment will occur 10 A. M. August 21st. The 5000 shares owe \$5000 and costs. The law makes it that parties bidding shall offer to pay the costs for as many of the shares, and that of course will leave the balance clear for the present holder, but it maybe that the bank (the pledges) or the titular owner shall come in and offer the *block* at private sale before the 21st. At present I cannot tell what may be done.

Yours very truly,

JOHN L. HOWARD.

JLH/EGO."

“WESTERN FUEL COMPANY.

San Francisco, August 15th, 1906.

Copy for Mr. E. E. Evans.

Mr. F. F. Randolph,

#413 Pacific Block, Seattle, Washington.

Dear Sir;

When I was in the north last, some parties owning limestone deposits near Kendall had given an option on their claims to a realty agent in Sumas and evidently under the impression that I needed them, a prohibitory price was put upon them. I told Mr. Reed, one of the parties, that when the option expired, and they were in a position to make a direct offer at a reasonable price, I would place it before my friends for consideration, but that we [314—121ii] did not need the deposit, and would not treat with the Sumas party and pay in the price as a speculative commission.

Mr. Reidle has dropped a line to say that this is the land which you represented in a contention with Balfour, Guthrie & Co., and that by reason of your relation to it and to the parties, you might be able to offer it.

If so, and you will submit it at a reasonable price, I will place it before my friends and give you a prompt reply by wire. If offered, it must be without the existence of any adverse claims.

Yours truly,

(Signed) JOHN L. HOWARD.

JLH.”

Oakland, August 18, 1906.

Ernest E. Evans, Esq.,

Dear Mr. Evans:

I recd. your letter enclosing statement of acct. with vouchers. These I at once sent to Mr. Dingee for a check which will come at once.

I have not been able to say much to you of late concerning the Kendall scheme. On Thursday I learned that the Seattle lawyers advised them that the name of Puget Sd. Cement Co. had already been appropriated. Today they concluded to adopt the name of Northwestern Co., and to do their work all over again. The first was organized while I was in the North, and I didn't know of it until my return.

Their public announcement of this thing has been withheld for prudential reasons connected with their negotiations for the purchase of the RRd. I understand that this is about closed, and the delay was caused by the absence in Europe of one of the principal owners. The fact of this negotiation is a great secret, but I am trusting you with it.

Mr. Roseberry who is Dr. Bachman's ass't is expected to leave here on Wednesday next for Kendall. I have written Reidle to meet him at Bellingham A. M. August 25th.

I presume that as soon as the RRd deal is accomplished they will fling their banner out and notify the world that the dirt will begin to fly at once.

I have met our friends several times of late, but no word has yet passed concerning the Northern Cement property. It is very strange. Mr. Balfour arr'd Thursday P. M., but I have not yet seen him.

I have had no further talk with Mr. Dingee concerning the character of the Northern deal, but it will doubtless come up when the garment is to be divided.

I am making calculations to be in Seattle on September 17th, and will spend a day or two in Nanaimo.

Trusting that you are in good health,

Yours truly,

JOHN L. HOWARD." [315—121jj]

"August 20, 1906. J.

Dear Mr. Howard:

I am in receipt of your favor of the 15th inst., and note that you will be in Seattle on the 17th prox. to prove up on the Stone and timber claim. You are aware that it will be necessary to have two of the witnesses there at the time, and I shall be glad to know whether I am to arrange for Reidle and one of the others to meet you or will you take this matter up with Mr. Reidle himself direct? I have already notified him that in all probability he will be required, and that we shall also require Snyder Reed, if he considers *hi*, and most reliable of the other witnesses.

I note all you write with regard to Mr. Dingee and Dr. Bachman, and hope to hear very shortly that everything is arranged. I am entirely in the dark about the other proposition, and have not the least idea what you refer to.

Yours very truly,

John L. Howard, Esq.,
San Francisco, Cal."

“August 24th, 1906. J.

Dear Mr. Howard:

Thanks for your letters of the 18th and 20th inst. I note from the latter that the 500 Central Brick Co's shares are not available at the present moment.

The information you give with regard to the Cement business is *not* gratifying, and you can rely upon its being closely bottled up, so far as I am concerned. It, however, did not come as an entire surprise, as, after writing you last, I almost came to the conclusion that this was the property you referred to particularly as Marpole stopped me in the Club, and asked me whether my friends were entertaining the proposition, as Cornwall had been up to see him, for a final reply, as he stated that others were negotiating.

On the 23rd inst. I had occasion to telephone Bailiee on business, and he informs me that he is leaving for San Francisco in a few days. I took the opportunity of asking him if he had any word from San Francisco about their cement property. He stated that he had not, except a letter in reply to one he wrote about three weeks ago after his visit here, saying that they had not had the opportunity of discussing the matter with you, and he does not appear to know what their intentions are, but they still think that they hold the key to the situation, in so far as the supply of water &c is concerned.

I presume you will arrive in Seattle on Sunday afternoon on the 16th prox. or by the morning train on the 17th. If nothing turns up to prevent me, in all probability I shall leave here by train or by boat

on the afternoon of the 16th inst. and meet you at breakfast on the 17th, in case there are any points you wish to discuss.

The salmon fishing season will be over tonight. On the whole, it has been a very poor one, but although the majority [316—121kk] of the canners will find it an unprofitable season, I am pleased to say that we shall have no load to carry after we have sold the salmon, which of course is a liquid asset.

Very truly yours,

John L. Howard, Esq.,
San Francisco, Cal.”

“August 25, 1906. J.

Dear Mr. Howard:

I am in receipt of your favor of the 21st inst. enclosing check \$1,019.30, in settlement of statement sent in connection with the Kendall cement property.

I am also in receipt of copy of letter received from Mr. F. F. Randolph, with regard to the Von Valkenburg line of claims, and for your guidance, enclose copy of letter just received from Mr. Horst on this subject, also copy of my reply.

Yours very truly,

John L. Howard, Esq.,
San Francisco, Calif.”

“Oakland, Aug. 26, 1906.

Dear Mr. Evans:

Yesterday I saw Mr. Dingee. The R. R. negotiations are still on, nearly but not quite to a point. One of the owners, or rather Taylor, Agt. for D. O. Mills, has attempted to raise the price, but I am told

that his actions indicate that he will accept, if he cannot do better than was offered. The N. W. Portland and Cement Co. has been incorporated to take the place of the other organization (P. Sound P. C. Co.) and I am informed that all the legal work is going on in connection with that, the deed of trust and the bonds. Bachman cannot leave here at this time, and Roseberry is detained at Napa Junction factory, perfecting the operation of some 'Separators' recently installed.

Dingee, Bachman and their lawyers are doing all the work in connection with the new scheme, and I would not be of much use in elaborating this high financing. I am well out of it because I have not time. Mr. Smith has been on his vacation since Sunday last, and labor matters here are quite unsettled. Coal shovellers are now getting \$6 per day and the S. F. street car lines are tied up today.

Bricklayers are now getting \$1 per hour, and are not hurting themselves with working.

Matters are bad here. I now expect to leave perhaps on Saturday Sept. 8th for Nanaimo direct, and hope to see you somewhere in the north.

Yours truly,

JOHN L. HOWARD." [317—1211]

"WESTERN FUEL COMPANY.

San Francisco, September 4, 1906,

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Sir:—

I enclose copy of Reidle's reply to my letter, copy

of which I sent you. He writes in English as incoherently as he speaks. I do not propose to allow anyone to put me in any kind of equivocal position in this matter.

I hear that the work of preparation of the Northwestern Cement Company is progressing, i. e., plans for factory are in hand, legal work being pushed, etc., etc. My impression is that D. & B. have put themselves in position to control the road, but I have no late news. This is confidential.

On Thursday, I received a note from A. B. W., written at the instance of R. B. asking for reasons whether the negotiations for the purchase of the Sumas properties are definitely at an end. I spoke to D., who wanted to confer with B. Unfortunately the latter is full of trouble due to a labor strike, and the unionizing of his 200 employees, many of them unwilling members.

I do not know how soon the answer will come, but in order to relieve the tension I will press for it early. If, however, it means a renewal of B. C. & Co.'s former offer, I do not look for any results.

Yours truly,

JOHN L. HOWARD "

J. L. H."

"Copy.

Montavilla, Portland, Oregon

August 27, 1906

John L. Howard, Esq.,

San Francisco.

Dear Sir:

Your favor of August 23rd received, and I beg to say that your telegram arrived Friday morning in

time before starting for Bellingham. I have also seen a telegram from the firm of Balfour Guthrie, San Francisco, to the firm at Portland.

‘Howard professed that Reidle says he is free, etc.’ This is correct. I said so, and I said so to Mr. Burns.

I decided to be independent as I *hard* the price they asked for the property. I had not asked for salary for month July and August, besides declared to Mr. London that I will (?) September 1st. He asked me to write it, I did *do*, as you inclosed (?) can see

Mr. Burns asked me if you had promised me a position or something else in your new company. I said, “No.” This is true also, which you know yourself.

Mr. Burns went to bluff me last Friday that when you are building, they will build also. I believe they will come to [318—121mm] terms and you will build together.

I will write you again in a few days. I will stand pat but honest.

Yours very respectfully,

D. W. REIDLE.”

“Copy.

Montavilla, August 16, 1906

Mess. Balbour Guthrie & Co.,

Sirs:—As I am convinced you are not going starting the proposed cement work at Kendall, and I think it is not in mutual interest to go on as we have done since, I beg you therefore, kindly for a final settlement.

Please be so kind make a proposition to this matter in writing.

Yours very respectfully,

(No answer today.)”

D. W. REIDLE.

“WESTERN BUILDING MATERIAL COM-
PANY.

340 Stucart St.,

Cement.

Brick.

Lime.

Sewer pipe.

Plaster.

Terra Cotta.

Roofing Slate.

San Francisco August 28, 1906.

Ernest E. Evans, Esq.,

Vancouver, B. C.

Dear Mr. Evans:

I am in receipt of your letters August 24th and 25th with enclosures.

No. 1 Lime Claims: If you can get them at the same price that was paid for Reidle's claims \$6,000 I would tell them that you will give them a check immediately on presentation of a deed. But it should be for all the claims and they should be free from any kind of liens or adverse contentions, especially that of Randolph, the Seattle lawyer, who has notified me that he has a lien on them.

I do not say that this is the highest price that Bachman would pay, but it is well enough for you to have the definite figure in hand, and if it developes that a little more must be paid, then you may fall back on your 'Wicked brother-in-law' for advice.

I notice that Bruce Cornwall has been visiting Mr. Marpole regarding the B. B. & B. C. R. R.

I am not quite sure when I will leave here. We have a W. F. Co. dividend day on September 10th and if I find that this does not interfere, I will start

for Nanaimo direct on September 7th or 8th
[319—121nn] at latest.

Yours very truly,

JOHN L. HOWARD.

J.L.H./EGO”

“WESTERN FUEL COMPANY.

San Francisco, September 4, 1906.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Sir:

To your letter September 1st. Horst had nothing to do with the Zender purchase. Reidle obtained the option on Sunday, June 30th, but I remember that Horst happened to arrive on that day, or on the night previous. Does it look as though D. W. R. was *winning* him in for an unearned commission?

As to the Watson purchase, we did delegate him to negotiate, but it has the appearance of his trying to make a brokerage, both from the buyer and the seller.

It is customary in our country for the broker to get his fee from the seller.

Randolph wrote wanting me to make a bid for No. 1 claim. I did not reply. Better let things rest until we meet next week.

Yours very truly,

JOHN L. HOWARD.

JLH.”

“Sept. 1, 1906. KH.

John L. Howard, Esq.,

340 Steuart Street, San Francisco.

Dear Sir: I have to acknowledge receipt of your favors of the 26th and 28th ult., and thank you for keeping me advised as to how matters are progressing, judging from which it seems certain that the enterprise will go on.

For your guidance, I enclose copy of letter received from Mr. C. A. Horst, together with copy of his claim and copy of my reply. This letter was a great surprise to me, as, beyond having a few words with him on general subjects at Zender's place, I have had no conversations with regard to the purchases, and it looks to me as if it was an attempted hold-up, although of course I don't know what the arrangement was with regard to the Watson land.

I note what you write with regard to No. 1 Lime claims, but in view of what you have already written Randolph, and what I wrote Horst, I do not think that we should say any more until we hear from them.

Yours faithfully,

Dict. E.E.E.

Enc.

Stockett is here today, full of enthusiasm and blowing his dividends in on his sister”

Offices of NEWMAN & HOWARD.

“Attorneys and Counsellors at Law,

Bellingham, Washington Oct. 29, 1906.

[320—12100]

Mr. John L. Howard.

87 Vernon Street, Oakland, California.

Dear Sir: We today wired you as follows, which we beg to confirm:

‘Matt Birdwell and Reed agrees for themselves, and Sam Birdwell, who is not here, to transfer to Purdy their interest east half of southwest quarter Reidle claims two thousand dollars, conditioned on their title reverting if a cement plant not erected. This is lowest possible price. Claim they can prove Reidle never properly located his claims. Claim Sam Birdwell has sold to Seattle parties his mining claims in conflict with your west eighty. On Saturday, Meeney with Professor Landis, Geologist, Sam Hill of Seattle, Harvey Lindley of Los Angeles visited claims. Saturday night Lambert advised Meeney he would not transfer to him his and Van Valkenberg’s locations on Reidle property, as they are not in jumping business.’

Mr. Purdy and I went to Sumas Wednesday evening (the 24th) and on Thursday we, together with Mr. Lambert, drove to Kendall and interviews Snyder Reed and Matt Birdwell. Sam Birdwell is clerking in a store in a small town in this state on the Columbia River. We took Mr. Reed over to Matt Birdwell’s, and put in several hours with them. We found Matt Birdwell much the more reasonable of

the two men. Reed did most of the talking and asserted the right to speak for Sam Birdwell, claiming to have a perfect understanding with him. The early part of our negotiations were confined to the east half of the southwest quarter, being the Reidle claims. We assured them of our belief in the validity of Reidle's title, but pointed out to them the danger of losing the plant at Kendall if litigation was to be encountered, assuring them, however, that in the event of failure to compromise, the litigation would be proceeded with, even though the plant were installed elsewhere. Without detailing all of the negotiations, will say that we finally offered them \$1000 for the title of Reed and the two Birdwells to the Reidle property. They insisted upon \$2500. We put it up to them just as strong as we could, after which, Mr. Purdy had a long talk with them out of my hearing, in which he assured them of the financial standing of the men behind this enterprise, and of their good faith, and of their intention to immediately instal a large plant. I heard him state that he would personally gladly give \$250 to see a compromise effected then and there, and he finally raised the offer to \$1500.

Matt Birdwell told Purdy that he would be willing to take even less than his proportion of \$1000 for his claim, but that he only had one claim, and that Sam Birdwell and Reed were working together in the matter. Reed appeared to be very confident of his position, asserting that he could prove by himself and others, and also by one who was in the employ of the surveyor whom Reidle claims surveyed the locations

that the required number of stakes were not set, nor was the line of the claims blazed or cut out in any manner except upon a portion of one or two sides.

As an evidence of good faith, Mr. Purdy stated that he would be willing they should convey the title to him, their title, whatever it was, to be re-conveyed to them in the event that a plant was not installed in the vicinity of Kendall within a reasonable time. They pretended to be fearful that it was your object to [321—121pp] purchase the property to keep others from developing it.

Declining to settle for less than \$2500, we told them that amount was in excess of what I was authorized to pay, and the only thing I could do would be to submit it for your consideration. Reed rode back from Birdwell's with us, and just as we were leaving he stated that since we had raised the offer to \$1500, he would write to Sam Birdwell and recommend that they close for \$2000, stating that he had no doubt but what each of the Birdwells would, together with himself, close for that amount.

After we had obtained his \$2500 offer upon the Reidle property, we suggested that while the Cement Company had no interest in the west half of the southwest quarter, of Sec. 23, being the property for which you have applied, we would of course assume that Sam Birdwell would file a relinquishment of his contest as to that land, upon receiving his portion of whatever should be paid for the Reidle property. Reed stated that Sam Birdwell was not in a position to do that, even if he should so desire as he had sold to some Seattle parties his interest in the claims

which he and Croy had filed upon, the land embraced in your application. He stated that he did not know the name of the party to whom Sam Birdwell had sold but that he would write to Mr. Birdwell, and would furnish us with that information if he could obtain it from Mr. Birdwell.

We offered to pay the expenses of Sam Birdwell, if they would send for him, and with him come to our office, so the deal could be closed up at once and the same time, in case we should come to a settlement. They advised us that they thought Sam Birdwell would be unwilling to come, on account of being employed at present. Matt Birdwell, however, agreed in case it should be necessary, to go down and close the matter up with Sam, we to pay his expenses.

No one could have presented the matter in any fairer or stronger light than did Mr. Purdy. Mr. Lambert was also of considerable assistance in inducing Matt Birdwell to take a proper view of the situation. Reed, however, is a 'Smart Alec,' and no one, apparently, has any influence with him.

Reed stated to Mr. Purdy that he had eight limestone claims besides a valuable deposit of limestone on his ranch, and that the whole could be purchased for the sum of \$8000. I do not recall whether the two claims which Reed located upon the Reidle property are among the eight referred to or not.

Knowing that you would not arrive in San Francisco until to-day Mr. Purdy, Mr. Lambert, Mr. Moulton, Mr. Garrison (the latter two of Sumas), and I went on a hunting trip in B. C. in the vicinity of Sumas, and did not return until Sunday morning.

That evening, Mr. Meeney, Prof. Landis, Geologist of the State University of Washington, Sam Hill of Seattle, (son-in-law of President James J. Hill of the G. N. Ry. Co.—) and Harvey Lindley of Los Angeles, returned from a trip to Kendall, where they had been inspecting some limestones properties, which undoubtedly included those in which you are interested.

In the telegram, which I sent you today, I stated that they had made this trip on Saturday. I believe, however, that they drove out and returned on Sunday, and Lambert does not think that they saw either Reed or Birdwell. They did not know, or if they did, they gave no intimation to the effect that we had any connection with [322—121qq] any of these lime properties. We learned from other sources that Meeney was very anxious to see either Lambert or Van Valkenberg and *aa* have one of them go with his party. Van Valkenberg is still out in the mountains and Lambert was with us. Meeney saw Lambert in the evening, and asked him concerning the locations which he had requested Van Valkenberg and Lambert to make. Lambert told him in substance that at the time they had made the locations, they believed the property to be vacant; that they were since advised that the property had already been taken up under the Reidle locations, and as they were not in the claim jumping business, they would have nothing more to do with the claims. Mr. Hill and his entire party returned to Bellingham with us Sunday evening, and left for Seattle on the evening train.

From what we could hear in Sumas, it is apparent

that there is an unusual amount of activity in lime land in the vicinity of Kendall, and Mr. Moulton, the gentleman who furnished you with the robes, and who runs a livery stable, assures us that most every week several men go out to Kendall with a view of looking into lime properities.

The only remark that Mr. Hill dropped that might be construed to have any reference to the matter in question, was a statement made to Mr. Purdy to the effect that they were figuring on adding about 3000 population to Bellingham.

It is apparent that the Hill party are either interested with Meeney, or are contemplating an alliance with him, and it may be a fair inference that it is to some one of them that *it is to some one of them that* Sam Birdwell has conveyed the placer locations which he claims to have located upon the property for which you have applied.

Mr. Lambert explained to Reed and Birdwell that after he and Van Valkenburg had investigated the Reidle title, they were satisfied that his locations were valid, and being prior to theirs, they had readily consented to convey their interest to your people, but that independent of the question of priority, he felt it for the best interest of the community and all concerned, that you obtain the property. Reed replied that the reason Lambert was so willing to make the conveyances was that his and Van Valkenberg's locations were made subsequent to those made by Reed and the two Birdwells.

Reed conceded that he was not here at the time, but stated that he had a man who was here, un-

doubtedly referring to Sam Birdwell.

It is Lambert's belief, in which we concur, that neither Reed or either of the Birdwells made any locations upon the property in question until several days after Lambert and Van Valkenberg made their locations. Should this prove to be the case, and their locations were properly made, upon acquiring title to the same, we would have good title as against Reed and the Birdwells, even though the Reidle title should prove defective. As between Reidle's locations and those of Reed and Birdwells, the burden of proof would be upon the later to show a non-compliance by Reidle and his co-locators with the mineral laws, since Reidle's locations would be conceded to have been attempted prior to those of Reed and the Birdwells. As between the Lambert-Van Valkenberg locations, and the Reed-Birdwell locations, the same on the fact of the record appearing to [323—121rr] have been made the same day, we think the burden of proof would rest upon whichever party asserted prior location.

In view of the experience which they have had in such matters, it is fair to assume that the Reed-Birdwell locations were made in substantial compliance with the act as to settling of posts, slashing out lines, and otherwise marking the claims upon the ground. They are not required to perform any further work until within sixty days following the date of their locations. If they have so complied with the Act, then as against them, the validity of the Reidle locations must at this time depend upon two things: 1st, a substantial compliance with the Act as to stakes,

marking out boundaries, and otherwise defining the claims upon the ground, and

2nd: the performance of \$10 worth of development work to each claim prior to the initiation of the adverse claims.

It is apparent from what Reed says that both of these prerequisites will be contested, and since other parties seem to be desirous of acquiring this property, it is fair to assume that they will be backed financially in the prosecution of such a contest. If what Reidle claims as to the method in which the claims were originally located is true, the only remaining question is that of the performance of development work. Reed claims that after a most careful inspection of the ground he was unable to find many of the stakes called for in Reidle's location notices, and unable to find any hole in the ground where any stake had apparently been driven.

He also asserts that the lines were not slashed out as required by the Act. The mere fact that stakes cannot be found at this time is not inconsistent with their having been properly driven and thereafter removed by other parties, but it would seem if the lines were properly cut that there should still exist some evidence that this work had been done.

As pointed out in our letter of Sept. 20th, these are questions which must be determined by an inspection of the ground itself. For these reasons, it is impossible for anyone to state by an examination of the abstract whether a good title exists under the Reidle locations or not. As suggested in the letter last referred to, in view of the fact that each of the Reidle

claims purport to have been discovered and located, and the location notices filed at 3:45 P. M. of the same day, considering their distance from the city the locators must have exercised a very creditable degree of diligence in accomplishing so much in such a short space of time. True, Reidle asserts that these claims were actually discovered and surveyed on July 7, and not July 8th, as stated in his location notices.

The whole matters turns upon questions of fact concerning which you are as conversant as I am, and it is for you to determine whether the adverse claims and attending annoyance of litigation with the possible result of defeating the Reidle locations are sufficiently serious to justify the expenditure of \$2000. In view of all the circumstances, however, we would suggest that prompt decision should be made in the matter.

In our conversation with Mr. Reed, we made no reference to his conflicting affidavits, believing it unwise to take that [324—121ss] matter up until the success or failure of the compromise had been determined.

Was unable to see Mr. Watson relative to release of \$500 mortgage on property purchased from him, but left data with Mr. Lambert, who will take the matter up with him, and advise me in a few days.

Copy of this letter herewith transmitted to Mr. Ernest Edward Evans, at Vancouver, for his information.

Yours very truly,

C. W. HOWARD.

CWH/J.”

“Oakland, Oct. 10, 1906.

Dear Mr. Evans:

Have been in train and automobile all day and find your wire at home tonight. I will wire you in the morning that I will start Saty. P. M. for Bellingham direct, and will also wire Reidle to meet me in Portland Monday A. M. prepared if necessary, to go with me. Last night I had a long letter from Mr. Howard, in which he advised negotiations thro' Lambert, looking to a settlement, and altho' I presume it is the wisest course, my disposition is to fight them to a finish. Maney seems to be at the bottom of the trouble, and I intend seeing whether we cannot give him a similar dose.

What irritates me so much is not that Reidle was self-deceived, and I think innocently so regarding his assessment work, but that Rose & Craven who were especially engaged and paid for examining his title, failed to discover the flaw that Mr. Howard had uncovered. On top of this, I was justified in giving such assurances to Bachman as to his position that he gave a warranty deed to the N. W. Cement Co.

Therefore, we must make the best terms as we can with this gang, and altho' I told Reid in July that we would have nothing to do with the jumping of No. 1 claims, when I get settled up on the Reidle business, if there is any chance of giving Maney et al trouble on No. 1., I will do it.

Whatever I may have to pay to the jumpers in Reidle's claims, I will ask him to reimburse us for because in the presence of Craven he agreed to warrant his title as it then stood, and if he failed to com-

ply with the law prior to his sale to us and thus left his claims open to attack, he must make us whole.

Also as soon as I get matters squared, if Peter Zender has had a hand in this jumping, I will order him out of that house at once.

As soon as the atmosphere is cleared, I will at once spend the needed amount of money, furnish the proof, and get the U. S. Patent whether Bachman is ready or not.

Howard wired me today that matters would rest safely until my arrival Monday night, and his letter stated that Maney had a deed to the No. 1 claims.
[325—121tt]

We'll dig out to daylight somehow. Stockett was to have started from Nanaimo this A. M. and I shall see him at Bellingham, or in the field in the early part of the week.

I have not seen any of the B.G.&CO. people. Henry T. Scott will give R. Balfour a luncheon on Friday. I am invited, but am not sure that I can attend. The brick yard cut 106,000 brick on Sunday last in 8 1/2 hours. The steam shovel has arr'd has been set up, and is about ready for work. Very late and I'm off to bed.

Yours,

J. L. HOWARD."

"Oct. 9, 1906. H.

Jno. L. Howard, Esq.,

87 Vernon Street, Oakland, Cal.

Dear Mr. Howard: I am in receipt of your favor of the 4th inst. and also have before me copy of Mr. C. H. Howard's letter to you of the 5th inst.

Reidle claims: For your guidance since last writ-

ing you, I enclose copies of some correspondence which has passed between these gentlemen and myself, and I am awaiting a reply from him to my letter of the 5th inst. The extract of this letter from Mr. Elijah Smith to yourself throws some light on this conspiracy. It would seem that Van Valkenberg is unquestionably acting for Maney, but whether Birdwell and Reed are acting for the same man, or individually, I cannot make up my mind. Mr. Butler to whom Mr. Howard refers, is a Seattle schemer. He was the man who secured the option on the property now being developed by the Washington Portland Cement Co. on the Skagit, and accidentally came across Mr. Miller who was related to the Andersons of Aberdeen, and Butler was successful in selling this property to the Andersons through Miller and between them they cleared up \$40,000. Maney had the contract from the Washington Co. to build the dam, which has been twice washed out. He is a friend of McMillian, and although he has not any means, he appears to be well known among suppliers of building materials, both in Seattle and Tacoma. Our mutual friend F. T. Crowe, Galbraith and Alex Bailiek all know him personally, and there is no questions but that he has taken up the No. 1 claims and come in with Butler with the idea of making a turnover. Whether our friends B. G. & Co. are mixed up in the affair with Maney, I hardly dare to venture an opinion.

There is no doubt, as time is very important, that if we can arrange with the contestants of Reidle's claims, to give us a transfer, it is the right thing to

do, but my idea is that we should compel Reidle to refund the money that we paid him to be put up in escrow, and let the various contestants fight out their own battles, the money to be paid over to the winners, we in the meantime seeing that we are perfectly certain in getting the claims, but of course if the other contestants could be bought for a few hundred dollars this would be a better arrangement.

When taking up the property now owned by B. G. & Co. [326—121uu] we had some dealings with Lambert, and employed him to buy some of them, and he appeared to be quite friendly so probably he is a good man to have with us.

Stone and Timber claim: You will have seen from my last letter that the reason you could not get a satisfactory reply from Randolph was because he was absent. I have about the same opinion of this gentleman as you have, and of course it is a question for us to decide whether we will let him fight the case for us, or employ Howard. I am afraid, however, this might cause some petty jealousy, and as you say he is a dangerous man to have against us probably it is advisable to let him go on with the suit alone.

I am so badly rushed just now, otherwise I would have taken a run down to Seattle ere this, and called on Randolph in a casual way. There will be a let-up after Friday when the Australian mail and s/s 'Bellerophon' get away, and if possible I will catch the steamer Friday night, or go down by train on Sunday.

Yours faithfully.

Diet. E. E. E. (enc.)

P. S. Since writing the above, I have received a letter dated 8th inst. from Reidle, copy of which I enclose. I did not know that Coupples surveyed the claims in July, but as apparently he did, it would seem to me that this could apply as assessment work."

..WESTERN FUEL COMPANY.

340 Steuart Street.

Coal:

New Wellington,
Dunsmuir Wellington,
Comax.
Beaver Hill.
Coke,

Building Materials:

Standard Portland Cement.
Red and Repressed Brick.
Santa Cruz and Alabaster Lime.
Marbleite Hard Wall Plaster.
Carnegie Brick, Terra Cotta and Sewer
Pipe.

San Francisco, October 9, 1906.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans: I am much obliged for your letter of October 5th, covering copy of one from you to Reidle. Isn't it a disgusting nest into which we have landed.

Reidle gave us every possible assurance and agreed to warrant his possessory rights against any previous adverse claimants. Then Rose & Craven passed favorably on the title he claimed to have, and now we find that this gang has found or thinks it has found some weak spot in his position, and have been encouraged to jump.

I think there is enough grief piling up in the north to induce me to start for there on Saturday P. M. and I shall wire you if I so decide.

If Zender is mixed up in that jumping business, I

will order him instanter out of that house where he is living rent free. I think that with C. W. Howard's assistance we will get away with that [327—121vv] gang but we *will* *Reidle* on the rack and keep him there until he clears up this trouble.

There is not much of news. Bachman is in the east. I saw a wire from him today saying that he was pleased with the work doing on the Atlantic plant, but they are trying to make some kind of a new deal on the Dexter factory.

The N. P. R. R. wants from Sumas

3.00 to Portland

1.40 to Tacoma

1.00 to Seattle, etc.

I am now an advocate of Barges or Steamers from Bellingham to all tide-water points.

I quite expect to see you in the early part of next week.

Yours very truly,

JOHN L. HOWARD.

JLH."

"(Copy) Seattle, Washington, Oct. 5, 1906.

John L. Howard, Esq.

#340 Steuart Street, San Francisco, Cal.

Dear Sir: Yours of the 27th to hand, also your telegram of October 4th, which was answered. I sent to Mr. Evans a certified copy of the Birdwell protest, and a certified copy of the affidavit of Reed corroborating Birdwell's affidavit of protest. I have been absent from the city, and my clerk attended to that while I was away.

Since my return I have gone to the Land Office, and requested them to give us an early hearing of the protest, and they have agreed to get out the notices as soon as they can, fixing a date for trial. At least thirty days notice is required by law to be given from the date of service, and the hearing cannot be had earlier than some time toward the latter part of November, so that will give you plenty of time after the date is fixed within which to get here and have your evidence looked up.

I will notify you just as soon as I receive word of date fixed for the trial.

Yours respectfully,

F. F. RANDOLPH.

Send to Mr. E. E. Evans,
Vancouver."

"WESTERN FUEL COMPANY.

San Francisco, October 9, 1906.

Mr. Percy W. Evans,
Vancouver, British Columbia.

Dear Mr. Evans: I am much obliged for your very full letter of the 1st about the Jarvis Inlet Slate proposition, and showed it to Mr. [328—121ww] Dingee today. He is inclined to treat the matter cavalierly, because it cost so much to get his quarry in a stated of preparedness and I think his general disposition is to underrate the strength and value of all his business adversaries.

It may be that when I next go north, if time permits I would like to run up and have a look at the deposit, so that I may report to him what I actually

see, and will then give him such suggestions as will be of value to him whether he accepts them or not. I may possibly arrange that we could represent both products and so avert a profitless scramble in territory where one may sell with better results than the other.

Yours very truly,

JOHN L. HOWARD.

JLH."

"Oct. 6, 1906. H.

John L. Howard, Esq.,

87 Vernon Street, Oakland, Cal.

Dear Mr. Howard: Since writing you yesterday, I have had a conversation over the telephone with Mr. C. H. Howard, who states that he had a very satisfactory interview late yesterday afternoon with Mr. R. S. Lambert, particulars of which he is now writing you, and will send me a copy, which I am anxiously awaiting. I notified Reidle by telegram that adverse locations had been filed over his claims, and asked whether he recorded the assessment work within sixty days after the discovery, and whether \$10 worth of work was done on each claim irrespective of trails, and how many stakes he put on each claim. The following is his reply:

'The location was recorded the same day as discovered. Forty Dollars work done in time in making the trail. Stakes were put on the claims according to law.'

This, of course, is extremely vague, as he does not say whether the assessment work was recorded or

not, which is an important point. However, no doubt his letter will fully explain matters.

Yours faithfully,

Dict. E. E. E."

"Oct. 3, 1906. H.

Jno. L. Howard, Esq.,

87 Vernon Street, Oakland, Cal.

Dear Mr. Howard: I did not go to Bellingham until yesterday, as the papers you asked Randolph to send me had not turned up by Tuesday evening asking whether they had been mailed, and as I got no reply by 11 A. M. on Wednesday, I telephoned his office, and found that Randolph was away. However, I arranged with his stenographer to send the papers to me to Bellingham, but unfortunately she only sent Birdwell's affidavit, having overlooked Snyder Red's which I asked her yesterday over the telephone to send addressed to me care of Newman & Howard of Bellingham, and gave Howard the authority to open the letter, so I left there without any opinion [329]—121xx] on the perjury question, but Howard thinks it would be extremely ibjudicious to take any action in this respect as Reid's crowd might retaliate by starting a prosecution against you, and thus cause a whole lot of annoyance.

Reidle's claim: I can quite realize how you felt at the interview with Dingee and Bachman, and I must say that I am very much upset at the position of affairs now. Before you receive this you will have received a copy of my hurriedly written letter to Reidle this morning, and you should also have received a long letter from C. H. Howard giving full

details of the claims staked by Van Valkenberg and others on this land, and I am afraid it will take months to straighten the matter out, unless, as suggested by Howard, he can arrange with Lambert to get rid of these jumpers, and have the claims properly staked for a consideration. If Reidle has staked out the Mount Baker and Mount Olympia claims properly, and which are really the important ones, I don't think there will be much difficulty in holding them, as I do not think there can be any question but that over \$10 was spent on each of the claims at the time that Reidle went up with Coupplles to survey the trail as he did a certain amount of slashing, and Howard seems to think that even if the \$10 assessment work was not recorded in the requisite time, the work done in July will prove that the claims were not abandoned, and with all due deference to Howard I don't believe the Government would take advantage of the technicality about the cutting of the trail, not counting as assessment work, and naturally I am very anxious to get his reply to my letter.

I saw Mr. Lyle, and he states that he was on the ground on the 19th ult. which must be correct, as we know that he left Bellingham on the afternoon train on the 18th. He states that the log shack is only just completed, and that his man had been on the claim all the time with the exception that he came down to Bellingham yesterday to draw his pension, he being a pensioner.

Lyle seems to think that the jumpers don't know he is there, as the cabin is built some little distance from the trail. Supposing we can get rid of the

jumpers, it will take some time before we can prove up on the claims, as I understand that after doing the \$500 assessment work on each claim we have to advertise for 63 days, at the end of which time if there are no adverses, we are entitled to the patent, and the land is ours, although it would probably take many months to get the actual deed from Washington.

Stone and Timber Claims:—Referring to yours of the 27th ult. as stated above, Mr. Howard thinks it would be injudicious to threaten Reid with prosecution for *prejury*. However, on receipt of his affidavit, he may offer his opinion. He also thinks, and I somewhat agree with him, that seeing that Peter Zender's name appears as one of the jumpers on the Reidle claims, he should be instructed not to proceed with the work of clearing the ledge, as, if he uncovers same any more, it will be detrimental to your interests.

Howard showed me a letter he had written you with regard to a remark made by the Chief Clerk in the Seattle land office about not allowing limestone to be taken up under the Stone and Timber Act. As far as I *am* can recollect, Randolph was positive that it could be, and Howard seems pretty positive also, so it appears to me very strange that this man should make the statement. [330—121yy]

With regard to the case of Bonney V. Reidle, which Howard quotes, this is the litigation we had in connection with the No. 1 claims, but my recollection of the affair is that the claims staked in question were quartz claims, the stakers claiming they

had found gold quartz, assaying about \$3 per ton, although Howard states that the staking was for placer claims. However, I will write Reidle about this.

I understand the date for trial of your contest has not yet been fixed. Howard thinks it extremely advisable that you should be present when it comes up, but he states that of course he has nothing whatsoever to do with the suit, it being Randolph's, so on the latter's return I had better consult with him. He is expected to be in his office on Monday.

No. 1 claims:—I note all you write with regard to these and Dr. Bachman being disappointed at missing them. As I did not think it advisable for me to meet Lamber, I asked Howard when he got hold of him, to ascertain exactly how the matter stands. It appears that Lamber is not a relative of Howard, but is a very close friend, and he is also a kind of an agent at Sumas for the B. B. & B. C. Railway.

Yours faithfully,

Diet. E.E.E."

..Please address me at 87 Vernon Street, Oakland, Cal.

Oakland, 10/4/1906.

Dear Mr. Evans: I am in rect. of yours Octo. 1st. I sent check to Snyder Reed for \$20 immediately on my return home, but as yet I have no acknowledgment.

I became uneasy at not hearing from Randolph about the date for the hearing at Birdwell's protest, and wired him today. He replied that no date had yet been set. This seems very singular, because

when I was there with him, he requested that an early date should be set, but in the absence of the Land Agent, the Clerk could not fix a time. If you should go to Bellingham after receiving this, you might ask Mr. Howard to phone the Land Office for the information.

I have an undefinable and instinctive distrust of Randolph. Yes, I know that the full assessment work should be done on Reidle's 80 acres, and I have explained it to Bachman. He went east on Sunday last, and if I find tomorrow that he will be long absent, I will go north soon and arrange to do the whole of the assessment work before Decr. 31st, and end that agony. Stockett is back in Nanaimo arranging to resume the work at Northfield. He has not found that vein on the lower level, but left his men there to find it if it is to be found. I had Graham's sample analyzed, and the quality is all right. Galbraith & Co. have an option on a large and valuable deposit of lime rock on Skagit River, and I have wired them to pay for an extension until Bachman or I could examine it. I saw R. Balfour and A. B. W. at lunch on Tuesday, but nothing was said about cement.

Dingee phoned me this P. M. that more of the R. R. stock had been put in escrow. When he takes this up, he will control and influence two-thirds.
[331—121zz]

I hope you are well. I am working like a slave.

Yours truly,

JOHN L. HOWARD."

(Extract from letter Elijah Smith.)

“Billings, Mont., Sept. 27, 1906.

I am sorry you run up against such a condition of affairs with respect to proving up on your 80 acres of land, and that somebody tried to blackmail you or hold you up. These things seem to be a part of the program of all up-to-date business transactions, and while I used to like to get into these pugilistic contests, I am frank to say they are less enjoyable now. I have no advice to give you about punishing the people after you win your battle. The play is not worth the candle as a general rule. I hope Mr. Many is not a party or part of the opposition, although from my talks with him, I presume you are in antagonistic relations with him, although he assured me that he had his property so that you or your people could not acquire it, although he expressed a desire to have me stay over a day and bring you together.”

(Extract from letter Sept. 26th.)

I wired Mr. Maney to meet me at the train, and he did. He told me you were at the hotel, and desired to have me come up and see you, and had in mind the possibility that I might bring you and him favorably together, at least as to knowing each other, but I was overdue here and with people waiting for me could not gratify him nor myself either, as under other circumstances I would have been pleased to do.”

“Dear Mr. Evans: Here are extracts from personal letters from Elijah Smith with whom Maney was coquetting for capital. It merely shows

Maney's attitude, and one of the Bellingham papers clearly alleged that he was connected with the jumping movement.

JLH."

"Oct. 1, 1906. H.

Jno. L. Howard, Esq.:

340 Stueart St., San Francisco.

Dear Mr. Howard: I am in receipt of your favors of the 27th ult. with various inclosures, and as soon as I get the paper which you asked Mr. Randolph to send me, which should arrive to-morrow afternoon, I will at once go off to Bellingham and I hope to catch the early morning train on the 3rd inst.

I do not attach much importance to Mr. Howard's remarks with regard to the Reidle claims, but my opinion is that the \$500 of assessment work on each claim, say \$2000 altogether, should be done as rapidly as possible, and the patent applied for. I am beginning to think that we shall receive a favorable report from Mr. Stockett, seeing that he has been such a long time away, as I am sure that he would not be absent from Nanamio if he did not think it was worth while.

Yours faithfully.

Diet. E. E. E. [332—122]

I omitted to send you the enclosed copy of letter I wrote Snyder Reid with the object of drawing him. He has not replied."

“Oakland, Sept. 29, 1906.

Dear Mr. Evans:

I saw Dingee and Bachman to-day, but only for a few minutes. Bachman goes east on Sunday and Dingee was damming about like a bear on a hot plate. This is not an offensive comparison, but both were mentally excited about the Napa strike, their multifarious schemes, and a 2:30 P. M. engagement.

Morrison, their lawyer, has made a warranty deed from Bachman to the new cement co., and they all seemed surprised after all my many explanations that Reidle had not sold them the land but only what he had, i. e., the possessory rights under his placer claims to those 80 acres. You see, it becomes imperative that we should preserve those rights until the proved amount of assessment work shall entitle Bachman to a U. S. patent.

As I wrote you, Lyle the Engr. was instructed to place a trustworthy man to live on those 80 acres, and to do labor which would count as assessment work until Pachman should attack the quarry face in earnest, or should send a representative there to take charge and relieve us of further responsibility. I don't know what kind of searches were made by Rose & Craven that Howard could find in Reidle's title so many possibilities of trouble, nor am I quite sure what conclusion Howard may have reached regarding it, but we don't want anything to happen to it, and when you go to Bellingham, kindly see whether any steps are necessary other than those I have taken with Lyle, to make Bachman's position secure. If necessary, I will arrange to spend the necessary

\$2000 before the end of the year on the Reidle claims, then submit the proof and get the U. S. Patent, and end the agony.

I explained to Bachman the position in which I found the No. 1 claim and altho' I explained that it has been sold or so reported, he seemed quite disappointed that he missed it. When you go to Bellingham, will you see whether you can find out the status of that property, and whether it is still purchasable. I should be afraid to try Horst, but someone told me that Van Valkenberg's partner was a relative of close acquaintance of Howard's. If it may be had at anything like a fair price, you might wire me.

I am being worked night and day. Nothing from B. G. & Co. R. B. returned last night from a trip to Sacto. valley.

Yours truly,
JOHN L. HOWARD."

"WESTERN BUILDING MATERIAL
COMPANY.

340 Steuart Street.

Cement.

Brick.

Lime.

Sewer Pipe.

Plaster.

Terra Cotta.

Roofing Slate. [333—122a]

San Francisco, September 27, 1906.

Ernest E. Evans, Esq.,

Vancouver, B. C.

Dear Sir: I am sending you by this mail, first, certain papers sent me by Randolph which are not complete; secondly, a copy of my letter of this date

to Randolph requesting that he send you certain copies of the Birdwell protest and its accompanying documents; third, a circumstantial statement by me of my connection with this stone and timber claim, together with copies of certain letters and telegrams which passed between you and me. Upon the receipt of the documents from Mr. Randolph, I would be very glad indeed if you could pay a visit to Bellingham, and take this matter up with Mr. Howard, of the firm of Newman and Howard. Show him the inconsistencies and contradictions of the statement made by Reid in his evidence for and against me. My purpose is to see whether the character of this evidence is such that a charge of *prejury* could be made to lie against Reid, and if it can, to see whether Mr. Howard could send for Reid, show him the position in which he put himself, and use that as a pressure to have Reid make Birdwell withdraw his protest so that I would not be compelled to make a special visit to the north, to defend my claim under my filing. There is so much of important work going on here that unless there is some important necessity for my leaving, I do not want to again go north this year.

Yesterday I had C. W. Howard of Bellingham appointed as the agent of the Northwestern Cement Co. to accept service for that corporation in the state of Washington.

As to your letter of September 22nd. If properly equipped, I think that we can transport cement from Bellingham to Seattle and Tacoma for less than the figures you name but I have no doubt that either now

or ultimately, we will get from the Railroad Companies the rate that we asked.

There are no new developements in the cement situation. I reached home at midnight on Saturday instead of 8 A. m. and have seen Dingee for a few minutes only. He and Bachman are engaged in breaking the strike at Napa and they will succeed. I expect to meet them at luncheon tomorrow, when Bachman will come to the City. They will go ahead at Kendall, although they have now lost several valuable months, and I have advised Dingee to take up the Railroad option and put himself in control of that property so that he would be in position to do what he wants.

From your letter, I would assume that B. G. & Co. had put a price on their property subject to a selling contract, and had given their property to Aman Moore to handle.

Stockett is still in the mountains at Glacier, and when he next gets out, I will know something definite.

Yours truly,

JOHN L. HOWARD.

JLH/EGO."

"September 27th, 1906.

F. F. Randolph, Esq.,

413 Pacific Block, Seattle, Wash.

Dear Sir: Your letter of September 21st enclosed a certified copy of testimony of Howard, Reidle, Snyder Reid, but the copies of the [334—122b] Birdwell papers did not contain the allegations of Birdwell in making his protest. Will you be good enough to send to Mr. Ernest E. Evans, Vancouver

B. C., a certified copy of the Birdwell part of the papers. I am sending to him the other certified copies which you forwarded so that he may take up for me the matter hinted at in the last paragraph in your letter. Your prompt attention will greatly oblige.

Yours truly,

JLH-EGO."

“WESTERN BUILDING MATERIAL COM-
PANY.

340 Steuart Street.

Cement.

Brick.

Lime.

Sewer Pipe.

Plaster.

Terra Cotta.

Roofing Slate.

San Francisco, Sept. 27, 1906.

Mr. Ernest E. Evans,

Vancouver, B. C.

Dear Sir: Herewith I send a long document from Mr. Howard bearing upon the title to the Reidle claims.

I went into it and came out of it with an attack of brain fever. When can any man feel secure in his title as against jumper rascals versed in this department of the law.

Will you please take up this matter when you go to Bellingham, and see where we are at? Because of this constant uncertainty, I instructed Mr. Lyle, the last engineer, to select a good, reliable, man, to build a log house on the Reidle 80 acres, and to stay there with a shot-gun if needed.

Will you kindly see Lyle, and learn what he did in that matter, and what arrangement be made of clearing the ledge. I have heard nothing since I left him two weeks since.

Very truly yours,

JOHN L. HOWARD.

J.L.H./E.G.O.”

“Nov. 1, 1906. H.

Jno. L. Howard, Esq.,

87 Vernon Street, Oakland, Cal.

Dear Mr. Howard: I have had some conversations over the telephone with Mr. C. L. Howard, and have before me copy of his letter of the 29th ult. but do not know what has passed between you within the last two days. What I suggested to Mr. Howard was that he should try and arrange for the \$2000 to be put in the Bank in escrow together with deeds covering the claims from the Birdwell crowd, and then let Reidle and them fight it out between themselves, but he states that this could not be arranged. After this, I suggested to him, that if he could not do otherwise, it would be better to arrange to have Birdwell put up his deeds in escrow to be delivered up in exchange for payment not later than the 20th inst. so that in the event of the decision in the stone and timber claim being against you, it might be good policy to get Reidle to fight them on these claims, as I presume that unless you get the stone and [335—122c] timber claim being against you, it might be good policy to get Reidle to fight them on these claims, as I presume that unless you get the stone and timber claims nothing definite can be done with

regard to the plant for the present.

I duly received copy of Mr. Randolph's letter to you about your case, and sent a copy of same to Mr. Howard, and had a conversation over the telephone with him on the subject. It is peculiar how these lawyers differ. Howard attached very little, if any, importance to the question as to whether you are taking up the land for your own benefit, whereas you see Randolph claims that it is the most important point, and that there is no question that limestone can be taken up under the Stone and Timber Act. On the other hand, Howard still claims that it is very doubtful whether it can be.

You will note from Howard's letter and telegram to you that Maney is quite active, and apparently has got the ears of Sam Hill, who is well off, and has a large following, and he is a particular friend of J. D. Farrell, who, of course as you are aware, knows all about the Balfour property, he having examined it personally himself.

It was a relief to me to hear that the mortgage on the Watson property would be taken up by the Venders.

I was much taken back at receiving a telegram from Baillie yesterday advising me that our old friend Mrs. Robt. Bruce died on Sunday last,

Yours faithfully,

Dict. E.E.E."

"Nov. 3, 1906. H.

John L. Howard, Esq.,

87 Vernon Street, Oakland, Cal.

Dear Mr. Howard: I received a telegram from

Reidle last night from Bellingham, asking if he could see me here today, to which I replied in the affirmative and *immediate* wired you that he would be here, and asking whether you wanted me to get anything else out of him beyond trying to persuade him to pay 2000.00 demanded by Birdwell. He turned up in the office this morning. It appears in the meantime that he has been consulting some lawyer in Portland on his way up. He also consulted Randolph, a copy of whose opinion I enclosed. He wants to do the fair and square thing, and is quite prepared to fight the cause, and if lose the case to refund the \$6000.00 together with interest. However, I told him that this was out of the question, that we must have a settlement promptly, with the result that he offered to pay \$1000 towards the \$2000 demanded by Birdwell, which, under the circumstances, probably is fair. I telegraphed this on to you, and now await reply. I had a talk with Mr. C. L. Howard over the telephone, and I told him that in the event of our compromising Bordwell that I thought the claims should be re-staked in Dr. Bachman's name strictly in accordance with the law so as to prevent any re-jumping as suggested by Birdwell, but he did not seem to think that this was necessary; however, there appears to be no question in my mind that the advertisement making application for the patent should be inserted in the papers without delay, as the \$2000 of assessment work could be done before the 60 days were up.

Reidle bought a new blue print in Seattle, and found out [336—122d] from same that Maney

and Butler had made applications under the Stone and Timber Act for all the land covered by the 'A' claims, and that their time for proving up in on the 6th inst. If their application is granted, it is conclusive evidence that limestone can be taken up under the Stone and Timber Act. Reidle states that he will prevent these people getting their patent, as he will write fully to the Land Office at Washington, D. C., and point out that the land is being obtained by fraud, as he applied for the land some years ago under the Stone and Timber Act, and it was refused, in which case he states that the land will be thrown open again, and in the meantime he will have the claims staked.

Yours faithfully.

Dict. E.E.E. Enc."

"Oakland, Nov. 3rd, 1906.

Dear Mr. Evans:

To your t/d's of Nov. 2 and 3rd. Kindly use Western Union if possible. The Postal Co. is very derelict about delivering. Your message of last night came at 11 A. M., and that of 3rd was delivered at 3:30 p. m. I answered both at once advising that Reidle pay \$2000, and I will repay half. Were it my own case, I would act under Randolph's advice to Reidle, and fight those highwaymen, but I am urging Dingee to start, and when he reaches N. Y. he will urge Bachman to meet me in the north and begin preparations. I don't want any litigation or trouble to cause delays, and if they will not pay the \$1000 I will. They will pay it, although no one should have to contribute a cent to those ghouls. You

will doubtless think to have the settlement safe thro' Mr. Howard, and then I trust that there will be no more trouble over the Reidle claims. I understood from him that Maney had filed as stone and timber on Claim No. 2, and when you mentioned it, I was not sure whether your allusion was to that or to my 80, because I think Maney has bo't Birdwell's jumping rights on the latter and he might be fortifying his position. It must refer to Claim No. 2, and if he proves up on that as S. & Timber, then Reidle's proposed attack on that claim thro' Phoenix will fail because assessment work does not apply to stone and Timber.

Query:—Should not Bachman file as Stone & T. on Reidle's 80 acres, and get title, while he is doing assessment work under the placer claims. If so, it would eliminate the assessment work feature.

Did you hear the results of the visit of Mr. London, with Emery, the S. F. Chemist. Doubtless you learned of the death of Mrs. Bruce on Sunday last. I attended the house services, but think he is staying at home since on acct of his eyes. I have been quite ill with a cold since my return. Am preparing to go north on 12th and am coaxing Mrs. H. to go and take care of me.

Yours,
J. L. HOWARD."

"WESTERN FUEL COMPANY.

'San Francisco, Nov. 3, 1906.

E. E. Evans, Esq.,

Vancouver, British Columbia.

Dear Sir: I enclose copy of a letter received from

Reidle. He [337—122e] wants to fight the jumpers. I want him to settle and to get them out of our way. I was satisfied that Meeney is behind this whole attack. Evidently he has bought Birdwell and Croy's claims on my 80 acres. Reidle was due at Bellingham yesterday. I asked Howard by wire if he had reported, and whether he was amenable to argument for a settlement. If not, I will send him a hot wire.

Dingee goes East on the 8th. Bachman will await him in New York. The strikers have given up the fight. The deed from Bachman to N. W. Cement Co. is being re-written. Dingee is President, and has signed the bonds, and left them with the Trust Company. I am trying to have Bachman leave New York for Seattle to go to Bellingham with me, and arrange to turn loose. All our troubles might have been avoided if he had jumped into the game in July last.

Yours truly,

JOHN L. HOWARD.

JLH."

"COPY.

Montavilla, Portland, Ore., October 31, 1906.

John L. Howard, Esq.,

San Francisco, California.

Sir: Your telegram received yesterday. I also have sent answer.

'Will proof proper location. Start Tuesday for Bellingham.'

I am very sorry of the delay in this matter, but I

myself have done all my best what I could do. I was six days in Bellingham, and Mr. Howard, the lawyer, has spent only time for making two small affidavits on Friday evening and Saturday before the train leaving South noon. He would not hurry up.

I, myself, got up to Bellingham, and if Mr. Howard don't go ahead with these people, I myself take on another lawyer and get an injunction against Reid and Birdwell. Then I will *proof* that I located proper.

I am sorry it may be a delay a couple of months, but I don't want to be beaten morally and financially by blackmailers. I believe you will agree with me if you take my view.

Yours very respectfully,
(Sgd.) D. W. REIDLE.

I have seen Mr. Burns of B. G. & Company. He is still waiting for a move from you to meet them. R."

“(Copy for Mr. E. E. Evans.)

San Francisco, Nov. 3, 1906.

Mess. Newman & Howard.

Bellingham, Washington.

Dear Sirs: When first I saw Reid I expressed distrust of him, but then did not think that I would have any direct or indirect dealings with him. Reidle was due with you yesterday, and I am writing you to know if he reported, and whether he was amenable to arguments about paying and getting Reid et al. out of our way. He wants to fight, but if he is confronted with the statements [338—122f] made by Reid as to remissness in originally complying with

all the regulations, he may soften up.

As to my own 80 acres, Randolph says the most serious allegation in Birdwell's protest is, that I did not take up the land for my own use and benefit.

The burden of proof is upon him, and as the Cement Company officials will be in the east at the time of the hearing, I will be the only available and competent witness on that point. If any confirmation of my statements be needed, I could get Bachman to come to Seattle from New York a few days after the hearing provided an adjournment could be had.

I have read your letters carefully, and note all you say about the relative merits of the different claimants on the Reidle claims. But the matter is up to Reidle. I am powerless, except that I shall try to sand-bag him into buying off this gang of ghouls. I will see you on or about November 16th. Maney is the chap who bought the Birdwell and Croy filings on my land.

Yours truly,

JLH."

"Nov. 5, 1906. H.

Jno. L. Howard, Esq.,

87 Vernon Street, Oakland, Cal.

Dear Mr. Howard: I received your telegram dated 3d inst. early yesterday morning, and immediately wrote Messrs. Newman & Howard and Reidle to Bellingham, as per copies of letter enclosed. I got both Howard and Reidle on the telephone this morning and they are starting to arrange matters. I strongly impressed upon both of them the necessity

of being put into a position so that the claims cannot be again attacked, and have left the responsibility on Howard's and Reidle's shoulders, and they are very carefully going into the question. As I believe it will be necessary to get the two Birdwells together, it is quite possible that the settlement may not be made for some days.

I note what you write with regard to Maney & Butler's application for stone and timber claims. You apparently misunderstood my telegram, although I thought that by mentioning the claims as "A," as they are so marked on the map, you would have understood they were the claims that Van Valkenberg sold to these people, and which sometimes have been called No. 1. Reidle will be in Seattle early tomorrow morning to find out the exact position. With reference to the guarantee about the completion of the works, etc., Mr. Howard advises me that it will not be necessary to give any such specific guarantee as you state it will only be a nominal thing, which would not hold water. In the face of it the request is an absurd one, made by ignorant people.

Yours faithfully,

Dict. E.E.E. Enc."

"Nov. 5th, 1906.

Dear Mr. Evans:

I am just in recd. of yours Nov. 1st. No one could be more positive that Randolph that limestone land may be taken [339—122g] up under the Timber and Stone Act. Howard is only in doubt as to this under construction that he has put upon some Land

Office rulings. Randolph took the step for me and as it is now too late for me to correct, I must stand, or fall, on his opinion. Dingee today approved of my act in assuming \$1,000 of the am't Reidle is to pay to get Birdwell's talons out of him, and he offered to send me his check. He has sent to Bachman in New York a letter I wrote urging him to come to Seattle from the East, and to be there as nearly as possible to November 16th. I want him to get busy and at once. This fooling away time is an invitation for others to get started first. Dingee told me today that he had already placed \$200,000 Northwestern Cement bonds at 1 for 1. Have not seen Bruce since the funeral, but hearing that he was to be at the office today, I went purposely to the club to see if he would not go north with me leaving here on Monday night next. I want him to see the mining properties, and have no earthly objection to his knowing anything that I may be doing at Bellingham. If he will go, it will do him good to get away.

The R. R. embargo to S. F. has interfered with our brick shipments, but it was raised today. During last two months we have averaged two millions, and the Supt. will try for more in Nov. I go there tomorrow P. M., and am hoping to pay in Decr. a 6% dividend on \$180,000 capital. Expect to pay more in 1907.

There should be another 2½% from Western Fuel in Decr.

Yours,

J.L.H."

"Nov. 6, 1906. H.

Jno. L. Howard, Esq.,

87 Vernon Street, Oakland, Cal.

Dear Sir:—I have yours of the 3rd inst. enclosing copies of letters you received from Reidle and sent Newman & Howard, contents of which I note with much interest. For your guidance last evening. I received the following telegram from Reidle from Bellingham:

'I start for Seattle, matter here arranged two thousand dollars deposited for settling claims. Letter written.'

I thought it best to send him to Seattle to watch matters in connection with the Van Valkenberg claims, which Maney and Butler are endeavoring to take up under the Stone & Timber Act.

I have a personal letter from Baillie asking if I can meet him in Seattle next week in connection with our shipping business. He also mentions that he would like to have a talk with me with regard to the cement situation, and the following extract may amuse you:

'I see you continue to hobnob with Howard, and his other cement friends, and this is a matter I want to talk with you about when we meet.'

So I think I will make an appointment with him for the 16th, but if you want me to be there on the 15th kindly telegraph me.

Yours faithfully,

“Nov. 8th, 1906. S.

J. L. Howard, Esq.,

87 Vernon Street, Oakland, Cal.

Dear Mr. Howard: I am in receipt of your favor of the 3d inst. and quite agree with you that it would be extremely advisable if Mr. Bachman could secure the title to the Reidle claims under the stone and timber act. I do not see why he should not be able to, except that he could not make the affidavit to the effect that he was taking up the land for his sole benefit, etc. I will consult Mr. C. L. Howard on this point as soon as I can get him on the telephone.

With regard to Mr. London's visit with Emery, I have been unable to get any particulars, but no doubt when I see Baillie next week, he may be able to give some information as to what they intend doing.

I was more than annoyed this morning to receive from Mr. C. L. Howard a cutting from the Puget Sound American, a copy of which he has also sent you, with regard to the erection of the works. I don't believe for a moment that Reidle gave any information whatsoever, and cannot help but think that the leakage is through Howard's office, through Purdy or Hyatt, or Paige, but I hardly think the two latter can be mixed up in it. Reidle has been warned both by Balfour's and ourselves many times about divulging anything to anybody, however, I will write him pretty sharply on the subject, as a report of this description is likely to be prejudicial to your getting title to your land.

For your guidance, I enclose letter received from Reidle. I have not had time to have a copy made.

so you can hold it for reference.

I am extremely sorry to hear that you have been under the weather with a severe cold. I have also been most unfortunate in this respect, and should have been in bed. However, the worst is over now—at the same time I feel pretty miserable.

Yours very truly,

Dict. E.E.E.”

“Oakland, Nov. 8th, 1906,

Dear Mr. Evans:

I have your letters Nov. 5th and 6th. Have no reply to my last letter to Mr. Randolph, copy of which I sent you.

I will wire you tomorrow advising you to be Seattle on 15h. Randolph may need you. Will also write Reidle to be there. I won't subpoena Reid because he will probably be there for the protestants. Howard has wired, viz.:

‘Unconditional quit claim deeds to Purdy from Lambert, Van Valkenberg, Reid, Sam Birdwell, Matt Birdwell, for each half of SW. $\frac{1}{4}$ just filed for record.’

This ends the agony over the Reidle 80 acres. If I can knock out the sand-baggers on my own claim, the atmosphere will be entirely clear. I am daily expecting a telegram from Bachman at New York saying if and when he will come west Via Seattle. I want to be entirely relieved of responsibility, now that I have secured what property he wanted, and have had the shadows lifted from it. It is now up to [341—122i] the construction end of the outfit, and I want them to take the business off my hands,

and begin quickly to saw wood.

I note your quotation from Bailies letter; Bruce and Williamson met me on Thursday at the club, and referred in a jocular way to that Bellingham newspaper article, where you and I were accused of jumping land. I side tracked the conversation by saying that there was nothing in it, and that I had the power to connect the real jumper of perjury. I think they would have liked to continue the subject, but that phase of it is not an agreeable one to me.

In so far as the main part of this matter is concerned, I long since made up my mind that I would not be a buffer between two irreconcilable parties with irreconcilable ideas. If the subject should again get warm, and I see a reasonable chance of bringing them together, I will do what I can.

The starting of a factory by either or both, may work a change in the mental attitude of either or both, and if that becomes apparent, I may again try the mediation business, but with anything like B. G. & Co.'s last proposal, my intervention would be time lost and labor wasted.

Hoping to see you on Nov. 15th, and that this may prove to be the last of the trouble at Kendall,

Yours truly,

JOHN L. HOWARD."

"27th Nov. 1906. M.

John L. Howard, Esq.,

87 Vernon Street, Oakland, Cal.

Dear Mr. Howard: I caught Randolph on the telephone yesterday afternoon. He stated he had taken

no action whatever in connection with your timber and stone claim as he was in hopes of seeing you on your way through. The Land Office has discovered that the land is covered by the Proclamation in connection with the coal lands, however, all the papers in connection with case have been forwarded to Washington, and they expect to hear within 30 to 60 days that the reserve has been lifted, therefore, in consequence of this, Mr. Randolph has not spoken to Mr. Gregory. He states, however, that it is practically certain that Gregory will make application for an appeal before the time expires, therefore, I told Randolph that I thought it was advisable, that at the first opportunity he had, he should try and effect some arrangement with Gregory, so that Notice of Appeal was not put in, and that you will get your certificate as soon as the Land Office in Washington decides that the land is not coal land, and he has promised to let me know the result of his interview with Mr. Gregory.

Yours faithfully.

Diet. E. E. E."

"Oakland, Dec. 3, 1906.

Dear Mr. Evans:—

I saw Dr. Bachman today. He returned from the east on Tuesday night. There are three brothers, Stewart by name, who are constructing the works for his Atlantic Cement Co., in Penna. One of the brothers is on the way here, or is about to leave the [342—122j] east. He and Mr. Roseberry, the supt. at Napa will leave for Kendall,—the one to locate the factory, the other to see what equipment may be

needed for construction purposes—I mean not the material, but the apparatus needed for erection, and this the Dr. says is ever now being assembled by Steward Bros. in Pemma. He is greatly pleased with the speed and character of their work, and he wants to make the dirt fly. I have explained to him all the trials and tribulations we endured in connection with this land matter, and he understands it.

Bachman's new deed to the cement Co. covers the Watson and Zender tracts, and while it purposely omits the Reidle claims he will convey this land as soon as he obtains title. The deed of trust from the Cement Co. likewise omits the Reidle claims, but covers all property that may hereafter be acquired. So that as soon as Bachman obtains title and conveys it, the Reidle claims will come under the Mtge.

This clears the way for the floatation of the Co. and the issuance of bonds and share, but no steps have as yet been taken.

“I did not know what effect this start may have upon the plans of your friends. As I told you, after the submission of their proposal and its rejection by Dingee, I resolved not to be a buffer between two irreconcilable parties. Still, if they make a new proposal which I think has a chance for consideration, I will yet do what I can to bring them together. There is not much hope in the situation, however.

Yours truly,

JOHN L. HOWARD.

P. S. Immediately he returns, will you please see Mr. McNeill and smoke out of him all you can re-

specting the power proposition. He was to discuss the matter with Mr. Kennedy in Montreal. Get, if you can, some idea as to the rate and the date when they can earliest furnish the juice. The construction of the line from the boundary to Kendall may be overcome by the Cement Co."

“WESTERN FUEL COMPANY.

San Francisco, December 10, 1906.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Sir: I saw Dr. Bachman on Saturday, and learned among other things in brief, that the Atlantic Cement factory in Pennsylvania 'Would be a winner.' That he and Dingee had secured control of the Northampton Mill adjoining it, which I saw. That Santa Cruz would not ship commercial cement until March because they are awaiting stuff that has been three months on the rail. The kilns, roaster and mills on the 'raw side' are in place and could be started at once, but for the absence of a few fittings, and the lack of a few additional cement mill-wrights to put on finishing touches.

His intention is to start this as soon as practicable and accumulate a large quantity of clinker that it may 'age' before being ground. In my own mind, I have fixed April 1st as the date of beginning.

I have had no word from Randolph about Gregory's appeal. [343—122k] Bachman is still daily expecting a wire that the contractor Stewart has started for San Francisco to join Roseberry and go to Kendall. A 5,000 barrel plant such as they pro-

pose is an immense thing, as I hear from those who have seen Santa Cruz. He mentioned during the conversation that he would have to get some N. W. Cement Company's bonds to make deliveries to the subscribers for \$150,000 at Napa, as he would soon begin to need money.

I brought up the subject to my relation to the new concern, but at once saw that it were better to leave that subject until the arrival here of Dingee, who leaves New York December 26th. As Bachman stated the matter some months since, his idea was to allot me \$600,00 in shares, in case I did not undertake any underwriting and \$900,000 in case I would undertake to place \$300,000 in bonds.

I will undertake the latter because in no other way can I take care of some friends on the basis of two for one.

I had long ago determined to set aside for you \$100,000 out of my allotment of stock besides letting you have, if you wished, \$50,000 or more of the bonds, carrying two for one, and further to share with you whatever additional I might be able to get from Dingee under his remark that he would see me satisfied.

I shall have to make a further division of my allowance here, but to what extent, I do not yet know, but as the company intends floating the scheme on the basis of one for one, I shall try to save as much out of the \$300,000 stock as I may be able to do. I will get Dingee's answer by New Year's day, and I think I will succeed with him.

Some subscriptions have already been handed to

me. What is your present mind.

Yours truly,

JOHN L. HOWARD."

"12th December, 1906. H.

John L. Howard, Esq.,

87 Vernon Street, Oakland, Cal.

Dear Mr. Howard: I duly received your favors of 3rd and 7th inst., but have delayed acknowledging same, hoping that I should have something definite to report to you from Mr. Randolph in connection with your stone and timber claim, but unfortunately, owing to the severe storms we have had, the telephone wires between here and Seattle have been down, and I did not care about writing or telegraphing him.

I am pleased to see that the Northwestern Cement Co. is going to commence work. Noting what you write with regard to Balfour, Guthrie & Co. and Mr. Dingee, I wrote a personal letter to Baillie, giving him a hint that matters had been definitely settled, and that the work was going ahead, and that you were desirous as you always had been, of trying to bring the two together, and that you thought that if they offered their property at a reasonable price, there was a chance of Mr. Dingee considering [344—1221] it, and for your guidance, I give you a copy of his reply. I do not know who the parties are that he has on the string, but for your guidance Mr. Anderson of the Associated Portland Cement Manufacturers, whom you met in Seattle has been here for two days, and lunched with me yesterday, and is to dine with me to-night. I have an idea and in fact

he virtually admitted it, that both he and his co-director Mr. Brooks, came to the coast with the idea of looking over the field to see whether an investment in a cement plant was advisable, and he told me that they had practically come to the conclusion not to do anything as the ground was so well covered in California, and was likely to be in Washington. I told him that Mr. Dingee had definitely decided to start work at once, which rather surprised him, as he asked me whether the land question had been settled, and how this would affect B. G. & Co.'s property. I told him that Mr. Dingee was a director of the Bellingham Bay and B. C. Railway, and virtually controlled it, and that probably if anybody else started near Kendall, it would be a bad lookout for them, and this information apparently was a surprise to him, and no doubt it would be a great surprise to Balfour, Guthrie & Co., if they knew it. Mr. Anderson is of the opinion that Roche Harbor is an ideal location for a cement plant on this coast.

With regard to the electric power from Stave Lake, I will watch for Mr. McNeill's return, but will see Mr. John Hendry *or* tomorrow if possible, and see Mr. John Hendry *or* tomorrow if possible, and of him.

Yours faithfully,

Dict. E. E. E."

"14th Decr. 1906. H.

John L. Howard, Esq.,

87 Vernon Street, Oakland, Cal.

Dear Mr. Howard: I wrote you on the 12th inst. advising that Mr. Anderson was here, and subse-

quently found out from him that he had come direct from Sumas where he went accompanied by his co-director Mr. Brooks, and Mr. London, of B. G. & Co.'s Portland office, and drove out to see Jacob's Cliff. He also told me that he had left Mr. Brooks and London at Sumas, from where they were going to Kendall, thence to Baker, thence to Tod Inlet.

Mr. Brooks made a social call on me this morning, I knowing his brother quite well, who is a director of the Associated Portland Cement Manufacturers. He said that he had had a hard trip, and went all over the Balfour property on both sides of the railway also over Dr. Bachman's claims and your stone and timber claim. He stated he was informed by a lawyer in Bellingham that your claim was in litigation which would take at least five years to settle. Furthermore, that it would take a very long time to get a patent for Dr. Bachman's claims. This lawyer who no doubt was one of the members of the firm of Dorr & Hadley, informed him that the Northwestern Cement Co. had registered a mortgage for \$2,000,000 the Mercantile Trust Co. being trustees, and that it only covered the Watson and Zender farms which were worth \$1,000 and \$1,500 respectively; that the bonds bore interest of 9 per cent, payable 3 per cent every four months, and that they matured in 1916, and that the company had to give these onerous terms as they found it practically impossible to raise the money—in fact he stated that Mr. Dingee could not sell the bonds. He had also been informed that Mr. Dingee was unscrupulous, that he was a plunger and had overreached himself—that Dr. Bachman had

no money— [345—122m] that you were the brains of the concern, and that you had little money to invest, and so forth. He stated that he was certain from information that he could get, that the Napa deposit had almost played out, and as a proof of this, they were hauling their clay some fourteen miles, and his suspicions are confirmed by the many excuses which were made when he applied for permission to go over the works; in fact, the Standard Company were doing all they possibly could to keep the Napa plant going until the Santa Cruz plant was ready—so you can see he has been pretty well filled.

Before leaving, I asked him if he and his associates were going to be interested in B. G. & Co.'s property, and he stated that although they came out to the coast with the intention of looking over the field with a view to making an investment, he and Mr. Anderson had decided to recommend their associates not to invest as they were under the impression that within two years there would be a collapse in prices owing to over-production which would mean a fight for the survival of the fittest.

I presume the other people they have on the string are Aman Moore and his following, but as to this, I can say nothing definitely as I have not heard from Moore for some time.

I saw Mr. Hendry yesterday afternoon. He stated that he could give no information at all until Mr. McNeill's return which is expected early next week.

With regard to your timber and stone claim, when speaking to Mr. Howard over the telephone today

inquiring about the assessment work, he asked me how the matter stood, and I told him that Gregory was waiting a reply from Birdwell. He stated that he was certain that Birdwell had no interest whatsoever, and felt positively sure that Maney was the buyer of his interest, and he was the man who was holding the property up. He stated that he would be in Seattle tomorrow, and would take the opportunity of calling on Randolph to endeavor to get to the bottom of the matter, at the same time, without making it appear that you were anxious, and would telegraph me the result. It will depend on what I hear from him as to whether I will leave here on Monday night for Seattle.

Yours faithfully,

Dict. E.E.E."

"WESTERN FUEL COMPANY.

San Francisco, Dec. 18, 1906.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans: I have yours of the 12th of December. Since last writing to you, I have heard nothing from Mr. Randolph and as the thirty days from November 19th will expire on Wednesday next, I am expecting some kind of word shortly.

there is nothing new in the situation. I saw B. on Friday for a few minutes at Napa, but he then had no advice of the starting of his construction man. He told me, however, that they had decided to exercise their option on the railroad stock. [346—122n]

This, however, for the present, is private.

I will, as you know, be glad to hear as soon as you have anything definite regarding electric power.

I note the extract from Baillie's letter. He evidently misinterprets my position. I have no desire to get the control of their property for Mr. Dingee, but because and only because of my long and pleasant relations with their firm, I will be glad to do what I may to get the two parties on a negotiating basis. If Dingee declaimed their offer of \$150,000, what use is *there* of my further intervention if now they say they will not sell for that sum?

If you could see the size of the 5,000 barrel plant and imagine a similar one at Kendall, you would say that Baillie was not considerate in language when he states that his people will make Dingee's plant look like thirty cents.

As I told you, I long since determined that I would not be a buffer between two irreconcilable parties, but if I find that I can consistently be of service to B. G. & Co. I will do so.

There seems to be a good deal of interest in our land troubles at Kendall, but it is not generally *known* how near they are to a final adjustment. Did I understand from your recent letter that steps had been taken to secure a cancellation of the President's order withdrawing that Township from entry?

Yours truly,

JOHN L. HOWARD.

Since writing I received a letter from Randolph, of which I send copy.

J.L.H."

“(Copy)”

Seattle, Washington, Dec. 15, 06.

Mr. John L. Howard, San Francisco.

Dear Sir: I received yours of the 12th inst. this morning, and then saw Mr. Gregory and asked him if he had heard anything from Mr. Birdwell, and he informed me that he had just received a letter from him in which Birdwell states that he wanted Mr. Gregory to make the appeal, and claimed that he (Birdwell) had other interests there besides his alleged interest in this property. Gregory says that he is of the opinion that an appeal will do them no good, and further he is of the opinion now that if an appeal was taken and the case remanded to this office with instructions to order a hearing, that he does not believe they could prove that you were taking this land for the benefit of somebody else other than yourself, and he knows that is the only tryable issue in the case. If they should fail to prove that you were not acting in good faith with the Government, then they should lose.

After a talk of something in the neighborhood of an hour with him this morning discussing these people and their method he says that he will send them a bill in advance of taking an appeal and if they fail to pay the bill in advance for services rendered by him heretofore, and for the appeal, that he *will* the time for an appeal go by default.

In other words he has agreed that they must either put [347—1220] up the money to take the appeal in advance including all costs and payments in full for his services, or else he will not proceed, and I have

agreed with him that in case they do not pay him for his services and in case no appeal is taken and our receipt issued, that I will see that he does not lose the money due him, merely as a matter of courtesy, and that we are not indebted to him or any person in any sum whatsoever, but of course, I would rather for your sake say lose the accumulating fee that would be coming to me, and let that go to Gregory for your benefit, than to have the appeal taken and cause you delay.

I will keep you posted as to results. If they put up the fee, and he takes the appeal, then as a matter of course I will answer.

You are right about the matter as to the course of the appeal that if an appeal is taken all ~~the~~ papers are transmitted to the Commissioner of the General Land Office for his consideration, and he will either sustain the local office in their action, or reverse their action, and remand the case for trial, fixing a new date.

Of course, if they should not succeed in their appeal before the Commissioner, they then have the further right of an appeal to the Secretary of the Interior; in the meantime, we not having a receipt for the land cannot do any work thereon until such time as our final proof is accepted and the land sold to us thereunder.

Yours very truly,

F. F. RANDOLPH."

“19th Decr., 1906. H.

John L. Howard, Esq.,

87 Vernon Street, Oakland, Cal.

Dear Mr. Howard: Thanks for yours of 10th inst. with information as to the Atlantic and Santa Cruz Companies from which I am glad to see that you are likely to make a nice profit out of your investments in these concerns.

With regard to the Northwestern Company, I note that if you only get \$600,000 in shares, you propose giving me \$100,000. I leave myself in your hands, but under the circumstances I certainly think that Mr. Dingee should be persuaded to make this up to at least \$150,000 in shares, and no doubt he will do this when you have an opportunity of putting the matter fairly before him.

In reply to your inquiry as to what my present mind is, with regard to taking bonds, my firm's intention right along has been and still is to invest \$45,000 (say \$15,000 each) on the basis of two to one, but before finally committing ourselves, I think some definite information should be given or a prospectus issued as to what the program is, and what we are subscribing to. For instance, we should know the total nominal capitalization, the amount of cash required (making ample allowance for contingencies) for the erection of the works, and working capital, whether all said money required will be forthcoming from underwriters, &c. [348—122p]

I would also like to know, assuming that \$1,200,000 is required, and the nominal capitalization of the company is \$2,000,000 and \$5,000,00 in shares, will

\$800,00 in shares remain in the treasury with the \$800,000 unissued bonds, to assist in selling these should more money be required later, or will the promoters take the whole of the ordinary shares with the first issue.

With regard to electric power, Mr. McNeil has been delayed, but he is expected here on the 21st inst. and as soon as he settles down, I will see him. The telephone wires are down to Seattle today and I have not heard from Randolph whether any appeal has been put in. *Howard*, who saw Randolph on Saturday, was under the impression that unless Gregory was acting for Maney or somebody else no appeal would be put in, and nothing would be done.

Yours faithfully,

E.

Dict. E.E.E."

“WESTERN FUEL COMPANY.

San Francisco, Dec. 20, 1906.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans: I am in receipt of your letter of the 14th ~~inst~~ of December, and am amused by the report carried to you, that of Dingee, Bachman and Howard, the latter only had brains, and none of them have any money.

You know how baseless are all the statements made to you concerning the scheme. The N. W. Cement bonds bear six per cent interest to the holders, but *their* is a special coupon at three per cent additional held by the Trust Company to protect the

holders under the California law in respect of the payment of taxes.

Napa materials are not playing out, and they are not hauling clay fourteen miles, none from any place excepting the adjoining quarry which furnishes the limerock.

In fact the clay used is the cover of the lime, and they have tested the ledge by a bore hole 1000 feet west of present quarry, finding 67 feet of cover, and at a depth of 600 feet they were still in limestone. As they developed the quarry westward the supply of clay will be greater than the quarry will yield in limerock, and either they will have to strip some of the cover, or bring in some outside limerock to make the proportion equal to the yield of clay.

They need not worry about the placing of the securities. Napa City alone applied for \$150,000, and early in November, Dingee told me he had applications for \$200,000 in his office. I have \$100,000 in sight without trying, and when Dingee reaches here at New Year's, I will give you all details.

Gregory's thirty days should have been up yesterday, but I do not know as yet whether he has acted. I hope that Randolph has been able to agree with him on the lines stated in his last letter, copy of which has gone to you. If he has, then the Seattle Land Office may issue certificate, and the troubles with my eighty acres will be over.

Then as there are now no adverse claims to the Reidle 80 acres, the atmosphere will be clear. [349—122q]

Yours truly,

JOHN L. HOWARD.

P. S.—Regarding the difficulties attending Mr. Anderson's visit to the Napa Junction works: Of course, at all cement plants, as I found in the east, there is a general reluctance to the visiting of strangers, but I happen to know in this particular instance that they were in the midst of a bitter fight with their employees who were picketing the works, waylaying the strikebreakers and all that sort of thing, and the reason assigned by Dingee was a real one. He gave them cheerfully, and with my knowledge and suggestion, a permit to visit the Santa Cruz plant, and they could have gone to Napa if the conditions had been otherwise.

JLH."

"22nd Decr. 1906. H.

John L. Howard, Esq.,

87 Vernon Street, Oakland, Calif.

Dear Mr. Howard: I have yours of 18th inst., enclosing copy of Mr. Randolph's letter to you of 15th inst., contents of which is very interesting. You will of course have heard before receipt of this, that Gregory has put in Notice of Appeal, which is most annoying. I understand that this notice is put in on account of Mr. J. J. Maney, and I am curious to know who is behind this gentleman, i. e., whether Balfour, Guthrie & Co. or Mr. Sam Hill have anything to do with it. Of course, Mr. Randolph will put in his answer to this appeal but how long it is going to take to get the matter cleaned up, it is impossible to say. In course of conversation over the telephone today with Mr. C. W. Howard, he states that the assessment work which should have been

done by the locators of the placer claim within sixty days has not *bee* done, and at my suggestion he is writing you as to whether you think it advisable to have placer claims staked off covering the same ground.

Yours faithfully.

Diet. E.E.E."

"WESTERN FUEL COMPANY.

San Francisco, Dec. 26, 1906.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans: To yours of the 19th December received 25th. I enclose copies of letters to Randolph and Howard which are self-explanatory. Now, I want to fight back, and to fight hard. You will note the suggestions I have made to Howard, and I trust he will see his way clear to act on them and promptly. Regarding the securities of the N. W. Cement Company, we may well let that matter rest until the return of Mr. Dingee who is booked to leave New York tomorrow. It was with him that I had my first conversations.

Suffice it to say that I will do my best, and I will be quite content if I get out of him \$50,000 additional, which will be for you. The capitalization bonds, etc. I will give you after I have seen them. Thanks for your Christmas telegram. Wishing [350—122r] you sincerely the best of health and the fullest measure of personal content and of business prosperity,

Yours very truly,

JOHN L. HOWARD."

“WESTERN BUILDING MATERIAL
COMPANY.

340 Steuart Street.

Cement.

Brick.

Lime.

Terra Cotta.

Plaster.

Sewer Pipe.

Roofing Slate.

Copy for E. E. Evans.

San Francisco, Dec. 26, 1906.

Mr. C. W. Howard,

Bellingham, Washington.

Dear Sir: Mr. Randolph advises me that contrary to his expectation and advice, Gregory has filed an appeal against the decision of the Seattle Land office in dismissing Birdwell's protest against my stone and timber filing. That in his mind there is no reasonable doubt that Birdwell has from the beginning been acting in the interest of one, Meany, who has undoubtedly paid Gregory's fee in order to have him go on with the appeal. Now, the time for any kind of a compromise has passed, and we want to make as short and severe a fight as possible. Is the nature of the conflict in Snyder Reed's two affidavits, one in favor of my final proof, and one in favor of Birdwell's protest, such as to lead to his indictment for perjury, either through the Grand Jury or otherwise?

If so, can you set the machinery in motion to do it? Cannot a keen detective be hired to worm out of some of that organized gang sufficient evidence to confirm the belief of Mr. Randolph in which I have shared, that Birdwell has also committed perjury in

that he did not make his filing in good faith, but was acting for, and in the interest of others.

If this may be done, can you start the machinery in motion? I want now to carry the war vigorously into Africa.

This is a very serious matter for the county of Whatcome in general and for the Railroad and its tributary interests, in that it may delay the construction of those works which will involve the investment of over \$1,000,000 and the employment of nearly 1,000 men, and it seems an outrage that an organized gang of blackmailers should be tolerated in that community, and for selfish reasons to block the installation of an enterprise that promises so much for the county. Public sentiment should be aroused to throttle them.

Yours very truly,

J.L.H.”

“(Copy for Mr. E. E. Evans.)

Seattle, Washington, Dec. 21, 1906.

Mr. John L. Howard,

Oakland, California.

Dear Sir: Mr. Newman and Mr. Howard of Bellingham called on me the latter part of last week and we had quite a talk about your case, and I explained to them all that I had done in the matter since I last saw you, and the conversation that I had with Mr. Gregory relative [351—122s] to a probable appeal by his client, and also that the time for an appeal would expire on this date. I have wired them yesterday that no appeal up to that time had been taken. I told them that Mr. Gregory had

advised me that his client owed him for services rendered in the case including the appeal, the sum of \$500, and that unless he received the fee that was due him, and to become due by virtue of the appeal, that he would have no interest in the case, and did not intend to appeal it.

Gregory has repeated this several times, but I have not seen him for several days to talk with him in regard to the matter until he served me with an appeal in the case this afternoon. I have tried to reason *ith* him that an appeal would only tie up the matter/ that he would surely be unable to prove any of the allegations of his complaint not already admitted; that is we admitted that they filed on this land after we did, but denied that your application was made in the interest of anybody except yourself, and that he know this, and that I knew it, and I think that he knows that to be true, but nevertheless has filed the appeal because he was paid for it. I am of the opinion from what I can learn that this man Birdwell sold out all interest in this land that he had prior to the time that he left Whatcom County, and I am of the opinion that he sold to this man Meany, who purchased the Birdwell properties up there through Van Valkenburg, and Snyder Reed, and I am of the opinion that Birdwell has no financial interest in the proposition at all, but is being used by Meany as a figure head in the case.

I do not suppose that the deed of transfer would be recorded in Whatcom County, in fact they would hardly have dared to do that because Birdwell has undoubtedly agreed to stand pat and try the case out

as a party in interest.

I am of the opinion that Mr. Meany is the man who put up the money to Mr. Gregory for the appeal and work that he has done in the case, as I know beyond a reasonable doubt that Gregory has received a fee in excess of the \$500 and I know beyond reasonable doubt that this man Birdwell could not have raised \$500 nor any considerable part of it, and you may figure from that that you have got a big Company to fight who will be willing to put up most any reasonable sum of money to acquire the title to this tract of land, and that they will go to most any extent to procure evidence, true or false, to beat you out of this tract of land, but we will stay with them.

I will answer this appeal within the ten days allowed for an answer, and I will do my best to have the local officers sustained in their ruling and order for dismissal of the Birdwell protest.

I have written Newman & Howard this evening, advising them that the appeal has been taken, and also of my surmise as to transfer and have requested them to keep a close watch on the records in the Auditor's office of their county, and let me know whether or not a deed has or will be filed. I should like you to send me a draft for about \$150 on account.

Very truly yours,

(Signed) F. F. RANDOLPH." [352—122t]

“WESTERN BUILDING MATERIAL
COMPANY.

340 Steuart Street.

San Francisco, Cal., Decr. 26, 1906.

Copy Mr. E. E. Evans.

Mr. F. F. Randolph,

413 Pacific Block, Seattle, Washington.

Dear Sir: I am in receipt of your letter of December 21st, advising me that Gregory had filed his appeal, and that in your mind there is no reasonable doubt that he has all along been a figure head for another crowd let by this man Meany of Seattle. From the knowledge possessed by a certain firm of lawyers in Bellingham, regarding the status of this case, I am being gradually driven to suspect that there may be a second crowd in interest. Of course, I am disgusted and now propose not only to fight it through, but also if possible to strike back and strike hard. If Gregory filed his appeal within the time limit allowed him is there no way of attacking Birdwell's filings, for as events are developing, it would seem that he was not acting for himself, and in his own behalf but in the interests of others?

Again, if there is any way of using the evidence of perjury against Snyder Reed, I propose now to use it and to push him. I enclose as you suggest check to your order for \$150.

Yours truly,

J.L.H.”

“WESTERN FUEL COMPANY.

San Francisco, December 28, 1906.

Mr. Ernest E. Evans,

Vancouver, British Columbia.

Dear Mr. Evans:

Yours 22d December. Yes, I have heard as you have been advised, that Gregory filed his appeal at the last moment. It is of course too bad; we did our best to prevent it, but failed, and it means a delay. Now, if Meany and his blackmail conspirators have fortified their rights by not doing the assessment work within the sixty days prescribed by law, then on the whole, I think it would be well to put on new placer locations, for this would give me the right to do assessment and development work, independent work, independent of the contest on my stone and timber filings, provided the President's proclamation withdrawing that township, does not interfere with making any kind of locations.

From Randolph's statements I have no idea that Meany can beat me with his appeal, but he is fighting to *tortue* me with delay hoping that I will cough up money or that the Company for whom they think I am acting will buy their holdings at a high figure. I do not see how this new location course could do anything but benefit my condition, but in view of Randolph's censure of Reidle for a similar procedure, I am suggesting by wire today to Howard that I approve subject to Randolph's approval.

Yours truly,

JOHN L. HOWARD.

J.L.H." [353—122u]

“WESTERN FUEL COMPANY.

San Francisco, January 4, 1907.

E. E. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans:

Saw Dr. Bachman yesterday. He starts east on January 10th. Stewart the constructing contractor, will await his arrival there and then come west. Meantime, he is shipping material by rail. He will go north with Roseberry, superintendent of Napa factory.

The option on the B. B. and C. C. R. R. shares expire on Saturday, and they are arranging to take them up.

I am expecting some word from you as soon as Mr. McNeill arrives. I do not expect to go north again until March, when all my annual meetings will be over, and I have many for which statistical reports with editorial matter must be prepared. Dingee has returned from New York, and I expect my talk with him during the next few days. One has time to catch him only at lunch, and that consumes two hours from my office until return. Do you expect to go abroad in the early part of the year? I have had to order more survey work for Dr. Bachman. In the previous instance he did not tell me just what he wanted, and it has to be done over.

Yours truly,

JOHN L. HOWARD.”

“WESTERN FUEL COMPANY.

San Francisco, Jan. 7, 1907.

Dear Mr. Evans: I saw Dingee and Bachman at lunch today. The N. W. Portland Cement Company will be upon the basis of

\$2,000,000 bonds.

\$5,000,000 in shares.

Through bonds will be sold, and only enough to put the property in working condition. The amount will be greater if a steam plant must be installed, and less if electrical power may be had. Each \$1000 bond will carry \$1000 in shares, and in your case, I have promised you an additional \$1000 on your \$50,000 subscription in addition to 1000 shares to you personally out of my promotion stock. I told both B. and D. what I intended doing, and that I wanted them to recognize your work by chipping in, and I left it with them to mull over. I'll get you more. Now the securities are ready for delivery.

If you have not changed your mind in respect of this investment, you might send me your check and I will at once send by express the bonds and shares according to this letter. If you remit please wire me.

Yours truly,

JOHN L. HOWARD.

JLH.

The above means that I contribute \$150,000 of your bonus stock.” [354—122v]

“WESTERN FUEL COMPANY.

San Francisco, January 10, 1907.

Mr. E. E. Evans,

Vancouver, British Columbia.

Dear Mr. Evans: Mrs. Howard has phoned to me this morning your telegram delivered at the house, in which you ask whether I regard it as safe for the Northwestern Portland Cement Company to go ahead in view of the unsettled state of the land titles. As you know I have greatly demurred at the delay in starting up there, which is one of the causes of our trouble. I mean by that, if Dr. Bachman had proceeded immediately with his plans he would have been in constant occupation of the Reidle tract, and nobody could or would have jumped it, but in view of the present situation I have felt free and justified in taking the money from some of my friends and investing it for their account in Northwestern Cement bonds carrying an equal amount of stock as a bonus. My reason for this is, on January 4th, Mr. Howard reported that all the assessment work on the Reidle claims had been done, and that on the next day he would file on the notice of proof and apply for a patent.

There are no adverse claimants in respect of these claims.

Now, with regard to my own eighty acres, of course the appeal taken by Gregory will hold up my stone and timber application, and pending the decision of the general land Office, neither Birdwell, Meany, myself or anyone else can enter into occupation of that land, and

First: I am perfectly satisfied that Birdwell and his backers will be thrown out of Court, and I think Randolph's view of this point is correct, but considering that nothing is certain in law until you have got it, we know as a fact that Mr. Birdwell did not conform to the law by doing so much work on his locations within the sixty days prescribed by law.

Secondly: Mr. Randolph has consented and believes it to be a good move that new placer locations shall be put upon those lands in my interest. They will *entitled* the new locator to proceed with development work for assessment purposes, and that work can be made to conform to the general and to ultimate plans for the Quarry development; so that to my mind it seems clear that I must win on either or both of these propositions.

But up to the time that Mr. Howard and Mr. Randolph coincided with the view that new placer locations would be made, and that if made, assessment work could be done, I must confess that I thought any action in respect of the sale of securities was a little bit premature.

My view, however, is different now.

The option on the Railroad shares has been taken up, and I will probably be elected Vice-President of the Railroad Company. Mr. Taylor representing the Mills interests will continue as President.

After the Western Fuel Company's annual meeting in February, I expect to go north via Bellingham. If you should agree with [355—122w] my view in respect of the North Western Portland Cement Company's securities, and take them up, you may rest

assured that I will look after your interests in that matter just as closely as I will look after my own.

Very truly yours,

JOHN L. HOWARD.

JLH."

"WESTERN FUEL COMPANY.

San Francisco, January 11, 1907.

E. E. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans: Yesterday the telephone was working so badly that the whole of your message was not understood, and on arrival at home last night I found your telegram. The part that I did understand I answered yesterday. Now you ask—

‘Is all the money positively in sight, and will it be put up at once,’

Mr. Dingee informs me that more than one-half is already subscribed and the balance of it is assured. I want to stand under my load of \$100,000, pay it in and get rid of it. It means that when paid, the bonds will begin to bear interest from that date, and if it is to be paid, it might just as well be paid first as last.

He and Bachman are taking \$150,000 each; the crowd in the Crocker Woolworth Bank will take at least \$150,000 with the expectation of more. Napa subscribers, I was informed by Dr. Bachman, wanted about \$1250,000 and no special effort has yet been made to push it. I have not had time as pressure of work and the difficulty of getting about the city has prevented.

You have no idea how irksome it is paddling

through the mud in this rainy weather, with no sidewalks in the business district the business men scattered far apart only a few lines running and they overcrowded, business is done under very disagreeable *condit-*

I was able to see Mr. Dingee for only a few minutes before lunch, and this is the word that I got. If, therefore, you feel satisfied with this and yesterday's explanation of the conditions and my opinions, would it not be just as well to make the investment first as last, and begin to realize the six per cent on it? The factory will most assuredly be built, and as Dr. Bachman left here yesterday for the east, among other things to meet the construction contractor Stewart, the latter will come out to the Coast immediately.

Yours truly,

JOHN L. HOWARD.

JLH."

"11th January, 1907. H.

John L. Howard, Esq.,

87 Vernon Street, Oakland, Calif.

Dear Mr. Howard: I duly received your letters dated 4th and 7th [356—122x] I presume the latter should have been 5th inst.

I note all particulars you give about the Northwestern Portland Cement Company, and am quite prepared to put up our subscription of \$45,000, provided you and your advisors are perfectly satisfied that the Company will not be taking any risk in going ahead until the title to your stone and timber claims is clear, and further, that all the money liberally esti-

mated, which will be required, for the erection of works and working capital, will be put up at once, and I wired you to this effect on 9th inst.

The reason I asked the last question is, that in the event of a sudden panic which may occur at any time, some of the subscribers might find themselves in a position not to be able to raise the balance of the money to complete their subscriptions consequently it might then be found difficult to raise the money to complete the works, and those who had already paid in full, might have their money tied up.

I enclose rough draft giving details of the company as I understand them from your letters, and would like you to fill any blanks which I have left, and correct me where I am wrong, particularly in connection with the question as to whether the promoters contribute the real estate and deposits of raw material for ordinary shares only.

Mr. McNeil has been laid up with influenza and boils. I had conversation with him on Tuesday when he informed me that he had had a discussion with Mr. Kennedy, the engineer, and Mr. Hinton, the electrician last week, on the question of supplying us with power, and that the engineer is now making a rough survey of the proposed pole line, to estimate the cost, and they hope to have something definite one way or the other laid before us next week.

I expect to leave here on the night of 25th inst. for Boston, and to sail from there on the 2d prox. per steamer "Republic" for Genoa or Naples and after spending a short time in the south, will reach England early in March where I have some business to

attend to, and will arrive back here about the middle of April. I am sorry I have made arrangements to go, as I feel I ought not to be away from here this year.

Percy sailed from Liverpool on the 5th inst., and is due here on the 19th or 20th. I am anxious to know if you have taken any action in connection with the Vice-Presidency of the W. F. Co. and whether we are to get 119 of his shares or 125—if so when the money will be required.

I enclose statements of disbursements made in connection with the cement business up to the end of the year with vouchers attached, showing a balance of \$2664.76. If you do not quite understand any of the items, please write me. Please note I have no duplicates of the vouchers.

Yours faithfully,

Encls. Dict. E.E.E." [357—122y]

"14th Jany., 1907. H.

John L. Howard, Esq.,

87 Vernon Street, Oakland, Calif.

Dear Mr. Howard: I am in receipt of your favor of 10th inst. and note from same that you do not consider that the Northwestern Portland Cement Company will be taking any risk whatsoever in going ahead with their enterprise in the present unsettled state of the land titles. On the strength of this I have just wired you that I will remit a draft tomorrow for \$45,000 addressed to you c/o The Western Fuel Co., 340 Stewart Street, San Francisco, on the Anglo-California Bank.

I have asked you to have all the securities made out in my name to start with, and will transfer them into different names later. I have them put in my name on the assumption that supposing in the course of years the company gets into debt and there is an assessment levied on the ordinary shares under Company laws of the state of California, that only the shareholders on the Register at the time same is levied are liable, and that once shares are transferred the original owners are not liable.

I am afraid that you will think me too careful, but I do not wish to take any technical risk whatsoever.

You state in yours under reply that Mr. Howard reported that all the assessment work on the Reidle claims had been done, and that on the next day he would file the notice of proof and apply for a patent. You apparently have misunderstood him. The assessment work that we have had done and recorded simply puts us in the position that we are not bound to do any more assessment work, and have it recorded until the 31st December next, but before then \$100 worth of work on each claim will have to be done.

I shall be glad to know whether the company now are going to make an official announcement that they are going ahead, and I shall also be glad to know whether the fact that the company have control of the railway, is also to be kept a secret. I simply ask this because I think I should write Aman Moore giving him these facts as soon as I have your permission, in case he is the other party whom Baillie referred to that they had on the string, as I am sure that one

party was the Associated Portland Cement Manufacturers of London who are completely off.

I am quite satisfied with your statement that you will look after my interests as if they were your own. I feel quite confident provided that we are not held up on account of titles, and that the business is managed properly and it will be a great commercial success, and if no time is lost, the work should be ready for operation in July, 1908.

With regard to the electric power, I will take this matter up again with Mr. McNeill in a day or two, by which time, if the last statement he made to me is correct, he should have the desired information, but privately, I have not any too much confidence in this gentleman.

The weather here is intensely cold, and in the East end of the city the thermometer last night went down to 4 below zero, but at my house the lowest it registered was 2 above. The demand for coal is simply extraordinary. We were clean out of all grades [358—122z] this afternoon, and we have practically been mobbed all day, and I wish to goodness, the weather would moderate as the crowds in both offices applying for coal simply disorganizes our business.

I am quite satisfied, however, that Mr. Stockett is doing the very best he can for us, and for the sake of the Western Fuel Company, I wish the present state of affairs would last for a long time.

Percy telegraphed from New York yesterday, his arrival after a very rough passage. He is due here on Friday, but I am afraid that he will be delayed getting through, as I understand the Great Northern

have practically gone out of business. They are refusing to take any freight whatsoever, and are only trying to run one passenger train per day.

Yours faithfully,

Diet. E.E.E.”

“Oakland, Jan. 15, 1906.

Dear Mr. Evans:

I am today in rec't. of your letter January 11th enclosing vouchers amtg. to 2664.76 which appear to be in order. I will send them to the Co. with an explanatory letter which will bring the needed check. Yesterday I received your t/d that the \$45,000 check would be mailed today, and on its rec't I will send you

\$45,000 in 6% bonds)

- (1) 45,000 in shares) from the N. W. P. C. Co.
- (2) 145,000 “ “) from JLH.

Block #1 will be cut into 3 pieces, but all in your name in case as you intimated you might wish to divide them.

Block #2 will be cut into 1 cert. of 1,000 shares in your name, and the 450 shares will be issued in 3 pieces to me as Trustee. These I will endorse before sending to you. I don't want the Company to know that any bond buyer is getting share bonus beyond the 1 to 1 which they have established. These endorsed certificates, as you know, may be transferred at any time upon presentation. I will fill up and mail to you tomorrow the blank forms you have sent to me.

* * * * *

I am glad that there is some expectation of a pro-

posal for electric power from Messrs. Hendry and McNeill.

I have so incurred the habit of spending pleasant hours with you that I shall greatly miss you on my next Northern trip, but my [359—122aa] loss will be your great gain, and I trust you will come back greatly rested, and fit for the next season's racket.

Yours truly,

JOHN L. HOWARD.

P. S.—I was caught by my obstreperous liver on Monday night, and this added to a long standing cold and cough has bottled me at home for two days under Dr.'s orders. The weather here is very inclement."

"15th January, 1907. H.

John L. Howard, Esq.,

c/o The Western Fuel Co.,

340 Steuart St., San Francisco.

Dear Mr. Howard:—Referring to mine of yesterday addressed to Oakland, I now beg to enclose draft \$45,000 in your favor on the *Angl*-California Bank, San Francisco.

Yours faithfully,

Dict. E.E.E."

"WESTERN FUELS COMPANY.

San Francisco, January 19, 1907.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans:

I am sending you by this registered mail certifi-

cates of Northwestern Portland Cement Company,
viz.:

#66— 150 shares)

65— 150 “)

#64— 150 “)

These were the bonus from the company with
your bonds.

#68—1000 shares)

Promoter's stock from J. L. H.

#69— 150 shares)

#70— 150 “)

#71— 150 “)

Representing the doubling of the bonus from
J. L. H.

Mr. Dingee has not forgotten my injunction in
your behalf, for he voluntarily referred to it today
and said it would have attention a little later.

I will send you by express today 45—\$1000 bonds
numbered from 125 to 167 Inc. There will be an
interest charge for you to pay beginning with the
date of the last coupon and running until yesterday.

For this I will send you a memorandum and you
may *remt.* The amount will come back to you on the
payment of the first coupons. These you may de-
posit for collection by your bank, or if [360—
122bb] you like send the coupons to me for collec-
tion.

Now to your letter of the 14th January received
last P. M. at home—

Your statement as to the Liability of share owners
under the Californian Laws is correct, as practice

runs with going corporation, but as a matter of fact it will be found that these persons are liable who were shareowners at the time of the creation of the debt, but the record of the company is never gone behind, because a buyer of shares buys them with the assumption that he takes the previous owner's place.

I confess now that I was mistaken in my view that all assessment work necessary had been done on Reidle's claims. My memory of Mr. Howard's statement failed me, but during 1907 when quarry development begins the needed balance will be quickly expended, and that will end it.

As to the Official announcements—

1st: As to the control of the Railway, I will ask Dingee if he has objections; if not, I will see to it that when the new Officers and Directors are elected at the Annual Meeting, the names shall be published, and then I will advise you.

2nd: As to the beginning of work, I am awaiting news from Dr. Bachman, now East, as to the starting of Mr. Stuart, the constructor, and I will give your office what word I get. I am pushing Dingee, and he realizes the importance of making hay, and I will have him wire Bachman tomorrow.

I expect to start North immediately after the middle of February when our annual meeting is over, and undoubtedly will see Percy.

I must go or come via Vancouver, for as V. P. of the B. B. & B. C. R. R. I will have business on each trip at Bellingham.

The Coal business here is awful. It melts as rapidly as received, and still does not fill the aching void.

We are threatened with investigations by the U. S. Government and by the State Legislature.

I trust that Percy will reach home in safety, and that you will have a restful and enjoyable trip. Dingee gives me the present subscription list, viz.:

W. J. Dingee.....	\$150,000
I. A. Bachman....	150,000
Crocker Bank Crowd.....	150,000
Napa Subscribers....	150,000
J. L. H. placed already.....	95,000

\$695,000

Yours very truly,

JOHN L. HOWARD.

J.L.H." [361—122cc]

“WESTERN FUEL COMPANY,

San Francisco, January 19, 1907.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Sir: Herewith Northwestern Portland Cement Company's check to my order and endorsed to you for \$2664.76, covering your statement and accompanying vouchers for expenditures at Kendall.

Yours truly,

JOHN L. HOWARD.

JLH."

“WESTERN FUEL COMPANY.

San Francisco, Jan. 21, 1907.

Ernest E. Evans, Esq.,

C/o Mess. Evans, Coleman & Evans.

Vancouver, B. C.

Dear Sir:

Owing receipt of yours of January 16th about Stave Lake Power Company, I have sent a copy through Mr. Dingee to Dr. Bachman, who is in the east, and who will be interested to know that the matter is being kept alive.

Yours truly,

JOHN L. HOWARD.

J. L.H.”

“Letter) No. 3050

Parcel)

P. O. San Francisco, Calif.

Received for registration ———, 190—— from WESTERN Fuel Co. addressed to Ernest E. Evans, Vancouver, B. C. ——— class postage prepaid. Postmaster per D. (The conditions in fine print at end of form not here typewritten.”

“WELLS FARGO & CO. EXPRESS.

Amount, \$45,000.

Read the conditions
of this receipt.

San Francisco, Cal. Jan. 19, 1907.

Received from J. L. Howard pa. valued at Forty five thousand Dollars, Addressed Evans, Coleman &

Evans, Vancouver, B. C.

(The conditions in fine print not here typewritten.)

Not negotiable.

For the Company,

BUESK.

Charges, Coll." [362—122dd]

“WESTERN FUEL COMPANY.

San Francisco, January 21, 1907.

Mess. Evans, Coleman & Evans.

Vancouver, British Columbia.

Dear Sirs: Herewith please find U. S. P. O. receipt #3050 for the registered mail package sent you on Saturday, and which contained Northwestern Cement Company's stock certificates and check; also Wells, Fargo & Company's Express receipt for 45 \$1000 bonds of Northwestern Cement Company.

We discussed every method of getting these to you, and parties experienced in forwarding such valuable documents advised us by all means to express them and to declare full value.

Yours truly,

JOHN L. HOWARD.

J. L. H.”

“WESTERN FUEL COMPANY.

San Francisco, January 23, 1907.

Mess. Evans, Coleman & Evans,

Vancouver, British Columbia.

Dear Sirs: Would you kindly send me your check for \$585, being interest paid for your account to the Northwestern Portland Cement Company on 45

504 *Standard Portland Cement Corporation*

bonds from Nov. 1st, 1906, to January 18, 1907, 78 days at 6%.

Yours truly,

JOHN L. HOWARD.

J.L.H.”

“24th January, 1907. H.

John L. Howard, Esq.,

87 Vernon Street,

Oakland, California.

Dear Mr. Howard: This is to acknowledge receipt of your favors of 15th and 19th inst. also 45 bonds, share certificates Nos. 64, 65, 66, 68, 70 and 71, covering 1900 shares in the Northwestern Portland Cement Co. also cheque \$2664.76 in settlement of statement for expenditure at Kendall.

Bonds: I note that we are to pay interest from 1st November to 18th inst., and will remit as soon as I receive debit note. The bonds appear to me to be in order, but the point which I am not quite clear on is about the 3% which you informed me some time ago was held by the Trust Company to protect shareholders in respect of the payment of taxes. Am I to understand that this comes to 3% annum?

Shares: I note all you write on this subject and am glad to see from yours of 19th inst. that Mr. Dingee is not likely to shelve the question of his and Bachman's remuneration to me.

Of course I presume you understand that I have no secret business from my partners and everything goes into the 'jack-pot.' [363—122ee]

I will not transfer any of the shares until my return, except some friends who are nibbling decide to

take a few bonds on the basis of one to one.

* * * * *

Business with us, I am pleased to say, is beginning to run smoothly again. I received a nice personal letter from Stockett the other day, at which I was pleased, as I had a suspicion that our relations had been somewhat strained during the strenuous times.

Percy arrived home some days ago all the better for his trip. I am off tomorrow, although if I had my way I would prefer remaining here for the time being.

Yours faithfully,

Dict. E.E.E."

"WESTERN FUEL COMPANY.

San Francisco, January 29, 1907.

Percy W. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans:

I have a letter from Ernest dated 24th January owning receipt of the bonds and shares of North Western Cement Company, also the check for \$2664.-76.

I will get from the lawyer who drew the deed of trust an explanation of the extra coupon feature, and will send you a copy. I have never seen the deed, and Dr. Bachman could not explain it.

Yours truly,

JOHN L. HOWARD.

P. S. Mr. Roseberry starts tonight for Bellingham.

J.L.H."

..WESTERN BUILDING MATERIAL COM-
PANY.

340 Steuart St.

Cement.

Brick.

Lime.

Sewer Pipe.

Plaster.

Terra Cotta.

Roofing Slate.

San Francisco, January 28, 1907.

Percy W. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans:

Continuing to you the advice that I would have sent to Ernest—Dr. Bachman is in the East, and on Friday I went to Napa Junction with Mr. Dingee to see about the prospects for [364—122ff] Cement output.

While there I made such a stir about the delay in preparations for *stating* at Kendall that Dingee arranged for Mr. Roseberry, who is Bachman's right-hand man, to go during this week to Whatcom County, look over the ground, determine the site for the Factory Buildings, give instructions to the local engineers about surveys, fix on the plan for developing the Quarry and arrange to get busy.

I have given him a letter of introduction to Paige the Railroad Superintendent, and started that ball moving.

On Saturday, I was elected Vice-President of B. B. and B. C. Railroad, and you now must take off your hat when you meet the new Railroad magnate.

I was to have gone North on Saturday P. M. but

something may happen at the office about February 1st, and if it does I want to be here. You are liable to see me during the latter half of February.

Yours truly,

JOHN L. HOWARD.

J.L.H."

“WESTERN BUILDING MATERIAL COMPANY.

340 Steuart St.

Cement.

Lime.

Plaster.

Brick.

Sewer Pipe.

Terra Cotta.

Roofing Slate.

San Francisco, February 5, 1907.

Percy W. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans: I have yours 29th January enclosing check for \$585.00 due interest on the Northwestern Cement Company bonds.

I am glad that you felt such benefit from your trip to Europe. It seems only a week or two since the time of your leaving home. The Coal trade is in fine condition, but the supply is abominably short.

You and Kingham have fared well because the order was to keep you supplied, but not stocked, whereas we have been frequently out of stock entirely.

The steamship contracts have prevented our supplying as much as we would have liked to the domestic trade, which yields the higher price.

I expect to leave here for Seattle, Victoria (to see

J. D.) and Nanaimo shortly after February 15th, and will come home via Vancouver and Bellingham. I will be glad to give you [365—122gg] the benefit of any experience I have in the matter of handling coal, and will be very glad also to avail myself of your invitation to stop a night with you.

Yours truly,

JOHN L. HOWARD.

JLH.”

“WESTERN FUEL COMPANY.

San Francisco, February 11, 1907.

Ernest E. Evans, Esq.,

c/o Mess. Thomas Cook & Sons,

Paris, France.

Dear Mr. Evans: Percy sent me enclosure that came to him from Aman Moore with the request that I sent it to you.

I succeeded in having Dingee send Roseberry (Bachman's right hand bower) to Kendall to locate the plant and to order certain work done according to his ideas of the future plans,

Since you left I have been elected Vice-President of the B. B. & B. C. Railroad, and will leave here on the 17th for Nanaimo, returning via Vancouver and Bellingham at which place Mr. Taylor wants to join me to go over the property and its needs.

Lawyer Howard had Mr. Hyatt file placer claims on my eighty acres, and makes reference to my purchasing Hyatt's interest in the claims. Howard wrote me that the claims would be located by friendly parties, but if I find that purchasing from Hyatt means any more than reimbursement and a gratuity

for any little trouble he may have had, there will be some very plain speaking.

Bachman is due here from the East before I leave and I will push him to speed the Kendall plant. I go to Santa Cruz tonight with Mr. Dingee to see the plant there, which is expected to start April 1st.

I trust you are having a good rest and that you will come back to us bye and bye refreshed and wound up for another campaign.

Very truly yours,

JOHN L. HOWARD.

J. L. H."

“WESTERN FUEL COMPANY.

San Francisco, March 8, 1907.

Percy W. Evans, Esq.,

Vancouver, British Columbia.

Dear Mr. Evans:

I told you that I *had* a letter in Nanaimo from [366—122hh] San Francisco indicating that a broker here wanted to form a syndicate to take the unissued bonds of N. W. P. Cement Company at one for one and resell them at $\frac{1}{2}$ for one. When the promoters indicated a disposition to meet him the broker began to ask for other terms and they threw him out of the office.

I might say privately that Bachman told me that the plans were all ready, and based on my talk with him since my return he has resolved to put in a steam plant, and whenever Hendry & Co. are ready with power they will be in position to negotiate terms, but

510 *Standard Portland Cement Corporation*

meantime they will not wait.

Yours truly,
JOHN L. HOWARD.

J. L. H.”

“26th March 1907. M.

John L. Howard, Esq.,

87 Vernon Street, Oakland, Calif.

Dear Mr. Howard.

Yours of the 8th inst, followed me to Winnipeg and back again. I note the result of the Broker's attempt to jew down the Promoter's of the N. W. P. Cement Company with the deserved result that he was thrown out. I also note what Bachman told you re the plans and the power they have decided to install. Am I to understand that you wish me to say anything to Hendry or not, or let the matter rest meantime? I shall be very glad to hear that the ground is being broken, and active operations made towards the erection of the Plant.

I regret to say that I think that I have lost the Gypsum Deposit as others got in ahead of me during my absence. I am sorry, but at the same time on account of the way the banks are acting here, perhaps it is wise that we do not commit ourselves to any fresh scheme just now.

Yours very truly,

Diet. P. W. E.”

“May 13th, 1907. S.

John L. Howard, Esq.,

87 Vernon St. Oakland, Calif.

Dear Mr. Howard: I was very much surprised to-day to receive a call from Mr. Shuttleford, with whom

you recollect, Dr. Bachman and ourselves had an interview in Bellingham, with regard to power for the proposed plant at Kendall. With him were two gentlemen from Boston.

His excuse in calling was that they had been over the ground between Bellingham and Vancouver, Bellingham and Mt. Vernon and also Mt. Vernon to Seattle, in connection with the proposed Electric Railway. He states that it is practically certain that [367—122ii] they will build from Bellingham to Mt. Vernon, but whether they will extend on to Seattle and on to Vancouver has not been decided.

The fact of the matter is that he wanted to find out our position with regard to power for the Kendall Works. I told him that you were very much put out at the way in which you had been treated, and that you considered negotiations were at an end. He stated, however, that he considered the matter at the time we had an interview as practically 'hot air' hence the reason they were very luke-warm.

He states that if they build the proposed electric railway, they will develop a large quantity of power, and they would then be in a position to treat with us. I told him that your associates has decided to put in a steam plant, and he stated that this was just what they wanted, as it would be a safe guard for them to make a contract.

He seemed to know that negotiations were on foot with the Stave Lake Power Company, but he rather ridicules the idea of their going to the expense of building, and he hinted that when it was an assured fact that the works were going ahead, his people

would be prepared to talk business with us.

Yours sincerely,

Dict. E. E. E."

"WESTERN BUILDING MATERIAL COM-
PANY.

340 Steuart St.,

Cement,
Lime.
Plaster.

Brick,
Sewer Pipe.
Terra Cotta.
Roofing Slate.

San Francisco, May 16, 1907.

E. E. Evans, Esq.,

Vancouver, B. C.

Dear Mr. Evans: You spoke to me when I was last in Vancouver about the scope of the financial scheme of the Northwestern Portland Cement Company. I discussed this today with Mr. Dingee.

As you know the authorized bond issue was \$2,000,000 and the authorized share issue was 5,000,000; one million of the bonds will be sold to carry one million of stock as bonus, and the money realized from this sale will be absolutely devoted to construction purposes and for nothing else.

The other million of bonds with one million of stock will be held in the treasury, and as you are already aware, the remaining three millions of shares constituted the promotion stock.

Including what you took I have placed thus far \$100,000 of these bonds with the appropriate stock bonus. If it comes in your way to place any on the basis of one for one, and you will write me, I will

arrange the matter.

Yours truly,
JOHN L. HOWARD.

J. L. W." [368—122jj]

W.

..17th May 1907. H.

John L. Howard, Esq.,

87 Vernon Street, Oakland, Calif.

Dear Mr. Howard: Thanks for yours of 13th inst. giving result of your visit to Kendall. To say the least, I am much disappointed at the apparent lack of interest that Messrs. Dingee and Bachman are taking in the Northwestern Portland Cement Co. and it seems very funny business to me that they should call up all the money and let it lie idle and pay 6% interest on it. If Bachman has got too much to do, why can't they appoint another Manager, and let him rush the work. As it is, it looks like to me as if they will lose all the good weather, which will practically mean that the works will not be ready for operation until 1909, and had I known there was going to be this delay, I certainly would not have put up my money.

Yours faithfully,

Dict. E. E. E."

"20th May 1907. H.

John L. Howard, Esq.,

c/o Western Fuel Co.,

340 Steuart Street, San Francisco.

Dear Mr. Howard; Thanks for yours of 16th inst. giving result of an interview you had had with Mr. Dingee, with regard to the financial scheme of the Northwestern Portland Cement Company. I under-

stand from this that the money actually realized from the sale of bonds, is to be absolutely devoted to construction of the Works; consequently I assume that the consideration for the \$3,000,000 in promotion shares, is the land, for which I presume, no cash is to be paid by the Company.

Am I also to understand that the Promoters pay the interest on the bonds during construction, or does the Company do this, and is it charged up to 'Construction Account' out of the proceeds of the bonds?

I refer you to your letter of 11th January last, in which you state that \$7000,00 had already been raised, viz.:

Mr. Dingee.....	\$150,000.00
Dr. Bachman.....	\$150,000.00
Crocker Woolworth Bank.....	\$150,000.00
Napa Subscribers....	\$150,000.00
John L. Howard..	\$100,000.00

Am I to understand that the whole of this money has been paid in and has the remaining \$300,000 actually been raised? If not, is there going to be any trouble in raising it, in view of the present uncertain state of the money market?

In your letter of 19th January last, you stated that in an interview you had had with Mr. Dingee, he had voluntarily referred to the question of giving me some Promoters shares, and that this matter would be settled a little later on. The next time that you have the opportunity, I should be much obliged if you will kindly refresh his memory as I think that the question should be settled without further delay.

Yours faithfully

Dict. E. E. E. [369—122kk]

“WESTERN BUILDING MATERIAL COM-
PANY,

340 Steuart St.

Cement.

Lime.

Plaster.

Brick.

Sewer Pipe.

Terra Cotto.

Roofing Slate.

San Francisco, May 21, 1907.

Ernest E. Evans,

Vancouver, B. C.

Dear Sir: To yours May 7th.

I regret delay in Northwestern Portland Cement Co. matters as much as you do, but I am informed that they are now being pushed. Bachman is said to be in the East contracting for material and equipment.

Am a bit amused at your account of the visit of Stone and Webster's men regarding power. If I can influence matters Mr. Hendry's Company will get the finest kind of a show because he met us like a businessman, whereas the others acted like a lot of boys.

Yours truly,

JOHN L. HOWARD,

Presd't.

J. L. H./K.”

“WESTERN BUILDING MATERIAL COM-
PANY,

340 Steuart St.,

Cement.

Lime.

Plaster.

Brick.

Sewer Pipe.

Terra Cotta,

Roofing Slate.

San Francisco, June 5, 1907.

Mr. Ernest E. Evans, Vancouver, B. C.

Dear Mr. Evans: I have been much away from home since receipt of yours 20th May. Your assumption is correct. I am assured that the money realized from the sale of bonds is to be devoted only to the construction of the works of the North western Cement Company. It is my understanding that the promoters give the land in consideration of the issue to them of Promoters Shares. I think it is not usual for promoters to pay interest on bonds during the period of construction. The bonds and interest are a charge against the Corporation, and it is customary for the latter to charge interest for that period to Construction Cost.

The list of subscriptions that I gave you in January was given me by Mr. Dingee. I do not know whether it has all been raised, but I assume from what has been said to me that it would be ready when wanted to meet construction expenditures and, of course, until then bonds will not be issued and interest will not run.

I have not thought of Mr. Dingee's promise respecting the additional shares for you when I have been with him, but at first favorable opportunity I

will take occasion to bring the matter up for definite reply. [370—12211]

I am about to start on the plaster scheme and wrote Percy regarding his subscription for himself and Mr. Warner, but have had no reply.

Several Reno people have expressed a desire to take shares, but I have given our agent there only a limited line.

Yours truly,
JOHN L. HOWARD,
Presd't.

J. L. H./K."

"WESTERN BUILDING MATERIAL COM-
PANY.

340 Steuart St.

Cement.

Brick.

Lime.

Sewer Pipe.

Plaster.

Terra Cotta.

Roofing Slate.

San Francisco, June 6, 1907.

Messrs. Evans, Coleman & Evans,

Vancouver, B. C.

Dear Sirs:

I have yours of May 31st, containing draft in my favor covering the subscriptions—\$5000 each—by your firm and Mr. W. P. Warner to the shares of Western Gypsum Company. I enclose provisional receipts, as you request and pending the issue of the Certificates I will deposit the amount at 5% interest with the Western Fuel Co., which interest will be accounted for to you.

I hold, as Trustee, for you and Mr. Warner the Western Fuel Co. demand note, so that if anything should happen to the writer, this matter may not become entangled.

In a few days I will be ready to launch the scheme. The Articles of Incorporation are drawn, and when I get the disentangling of Nevada titles completed I will send you, for your files, a complete record of everything that has been done.

Your money will not be used until everything is done to suit me. I will have no trouble at all in financing this comparatively small enterprise. My predecessors took things for granted in respect of Nevada Land titles, and I am profiting by their experience as well as my own in Washington.

NORTHWESTERN CEMENT COMPANY.
Since April 28th I have been to British Columbia, twice to Nevada and once to Santa Barbara County on business. I do not complain about work, but the past month has been terrific.

It is true that money is tight here. The call for Real Estate and building speculations was so heavy that first the Savings and latterly the Commercial Banks closed their purses against that business. But good banks are now raising interest rates on good customers, and we have not been asked to pay over 5%.

Burns & Bailiee may wish to be true what they said of Dingee, that he could not sell his Northwestern Cement bonds, but I think he has not offered them. I gave you in a previous letter [371—122mm] the amount of subscriptions as he gave them to me. It

may be that the underwriters had not taken them up, and do not expect to until it is necessary to meet the drafts for construction material, which I understand is now being ordered by Dr. Bachman, which is in the East.

However, I will get Dingee to lunch with me tomorrow, and ask him particularly about the matters of which you inquire.

I might say that the Hardwall Plaster we are making excells any other kind offered in our market, and I will have a sample bag sent to you by one of our steamers.

I suggested 'Devon' as the name of the Cement Company's station on the B. B. & C. R. R. Mr. Paige has adopted it, and the three transcontinental lines have agreed to make it a terminal point.

Stockett exploited the Coal Croppings near Kendall but found nothing, of value.

Yours truly,
JOHN L. HOWARD,
Pres't.

J. L. H./K."

“WESTERN BUILDING MATERIAL COM-
PANY.

340 Steuart St.,

Cement.

Lime.

Plaster.

Brick.

Sewer Pipe.

Terra Cotta.

Roofing Slate.

San Francisco, June 7, 1907.

Ernest E. Evans, Esq.,

Vancouver, B. C.

Dear Mr. Evans:

Yesterday I had a hurried talk with Mr. Dingee, and obtained a promise that he would send me a certificate to John L. Howard, Trustee for \$25,000 in shares of Northwestern Portland Cement Company, which I will endorse and send to you. He gives this out of his own allotment and without reference to his ‘wicked partner’ the Doctor.

Now I think I have done pretty well for you, don’t you? I read to him the remarks of Bailie & Burns to you, and his reply was that they would put the scheme through ‘If it took his shirt.’

I know quite well that in all these investments you are relying on the writer and we will do our best to rise equal to the responsibility.

Yours truly,

JOHN L. HOWARD,

Pres’dt.

J.L.H./K.

Since writing above the Cert. has come in, and I enclose it. You may hold it until you want it transferred.” [372—122nn]

“June 11th, 1907. S.

Jno. L. Howard, Esq.,
340 Steuart St.,

San Francisco, California.

Dear Sir: We are in receipt of your favor of 6th inst, enclosing provisional receipts for \$5000.00 each, on account of our firm, and of Mr. W. P. Warner, for shares in the Western Gypsum Company, and when you send us the certificates, we will return the receipts.

We note that until the money is actually required, by the Company, it is earning 5%, but we hope that you will have things disentangled within a very short time, and that you will be able to go right ahead.

With reference to your inquiry on account of Mr. Agassiz, we beg to enclose form of mortgage, which is used here and in connection with our letter of yesterday giving the values of the Vancouver property, you must bear in mind that the Loan Companies only loan 50% or at the outside 60% on the valuation, they having the property valued as a rule by two independent real estate men. Regarding the property in the Yale-Lytton District we find that this is in the neighborhood of Kamloops, and our solicitors have telegraphed their correspondents to find out particulars. With reference to the Agassiz Estate we find that they have proof of the death of Mr. Agassiz, but our solicitors advise us that in the absence of the Trust Deed to which Mr. Agassiz refers they are unable to say whether his statements are correct, as there is no Deed on record in New Westminster.

522 *Standard Portland Cement Corporation*

However, they are writing us on this subject,

Yours faithfully,

Diet. E.E.E.”

“Personal.

June 12th, 1907. S.

Jno. L. Howard, Esq.,

San Francisco.

Dear Mr. Howard:—

I have to thank you for yours of the 7th inst. enclosing certificate for \$25,000.00 shares in your name as trustee duly endorsed to my firm, of the North Western Portland Cement Co., which you obtained from Mr. Dingee as my commission. I have to thank you for the trouble that you have taken in the matter, and with you, think that you have done pretty well for me, and sincerely trust that both of us will reap a handsome reward for the time and trouble spent on this enterprise.

Yours faithfully.

Diet. E.E.E.” [373—12200]

“WESTERN FUEL COMPANY,

San Francisco, August 12, 1907.

Ernest E. Evans, Esq.,

Vancouver,

British Columbia.

Dear Sir:—

Have you been able to get any information from Mr. Hendry or McNeill, regarding the power question?

I omitted writing you on my return as to what I saw at Kendall. The Spur Track was laid for 1500 feet from the Main line. The Right of Way was cleared for the balance of the distance, and was being graded.

Altogether the factory site and spur track required the clearing of about 50 acres, and on the factory site there were two engines engaged in drawing and piling stumps preparatory to burning.

It was estimated that this part of the work would be finished by October 1st, and then there may be a little grading to do, because after the trees and bushes are cut out some surface inequalities will require to be levelled.

Did I tell you that I paid Gregory \$150.00 and he withdrew his appeal, and that I have now the U. S. Land Office certificate?

I do not learn anything further about the Northwestern Cement Company further than that the plans are all completed and that Dr. Bachman does not advise Mr. Dingee what he is doing.

Yours truly,

JOHN L. HOWARD.

JLH."

"16th August 1907. H.

John L. Howard, Esq.,
Care Western Fuel Co.,
340 Steuart St.,
San Francisco,

Dear Mr. Howard: In reply to your letter of the 12th inst. both Messrs. Hendry and Macneill have been absent since you left here, but the latter returned

the other day and I had a talk to him yesterday. He states that the work at Stave Lake is further ahead than they anticipated and if they are not bothered with early high water this fall, they fully expect to have their piers sufficient high so that they can continue work right along, in which case, he states that they will be ready to supply power next August to Vancouver; consequently, you will see from this that the whole question hinges on whether the fall rains are going to be early or late this year. We had a spell of wet weather last week and the water rose considerably, but not sufficient to stop work, and it is now receding, but on the other hand, the weather looks quite unsettled. [374—122pp]

I note all you write with regard to the progress of the work at Kendall. This is satisfactory as far as far as it goes, but I candidly confess that I am sorry that I put up any money, not on my own account, but because on the strength of statements I made that all the capital had been put up, I sold \$30,000 worth of bonds to friends of mine, and I feel morally responsible to them for the money, as I assured them that before investing, I had investigated and had been informed that all the money had been actually paid in, and that the works would be started at once, but I have my suspicions that the only money which has actually been put up is that which has been put up by ourselves and your friends, and that this is the money which is being now expended.

Yours faithfully.

Dict. E.E.E."

“87 Vernon Street, Oakland California.

Dear Mr. Evans: I received yr. note of 22nd. August enclosing clipping abt. Western Estates Co.

I have sent the letter to Mr. Dingee and have again asked what Dr. Bachman is doing in the east in respect of ordering the Equipment for Kendall—will advise you what I learn.

Some of our miners are showing their teeth a little as against Octo 1st. A second mass meeting was called on Saty. but the wires are not working well & T.R.S. is probably writing instead of wiring. No trouble may come, but a minority of hot head Socialists is trying to run the game and if we can get the rank & file of our men to come to the front I think that trouble may be averted. It seems at its inception to be a combination of influences i e

From Hawthonewaite who wants to rivet his political power in Nanaimo & from the United Mine Workers of America who want to get their grip on our property & business.

Confidentially we have written Wellington Colly Co. that our Cala agreement must terminate Aug. 31. J.N.L. is due here in the latter part of the month to confer.

In haste,

Yours,

J.L.H.”

“9th Sept. 1907. H.

John L. Howard, Esq.,
Care Western Fuel Co.,
San Francisco.

Dear Mr. Howard: Thanks for copy of letter re-

ceived from Mr. Dingee, from which I note that the plans for the Northwestern Portland Cement Co. have been completed, and he alleges that some of the machinery has already been ordered, and I hope that such may [375—122qq] turn out to be the case.

For your guidance, I had a call from the manager of the Northwestern Hardware Co. at *Bellingha*, who wanted us to sell him 6000 bbls. 'Vancouver' brand Portland Cement. I told him that we would not sell any cement in the U.S. without your consent. He informs us that the City Engineer at Bellingham absolutely refuses to allow the contractors for the street, to use 'Standard' or 'Golden Gate' and he also states that although the Washington people supplied some excellent quality some little time ago, there has been some trouble with their Cement, and not only that, the Company states that they are 80,000 bbls. behind in their orders, and cannot supply him. Under these circumstances, I should be much obliged if you would kindly consider this matter and telegraph on receipt whether you have any objection to the Vancouver Portland Cement Co. selling this cement in Bellingham.

I indicated to the Northwestern Hardware Co. that our price would be about \$2.65 per bbl. of 375 lbs. F.o.b. the Works at Todd Inlet, and the freight rate would be 25c per bbl. sacks to be charged for at 10c each, which money was to be refunded on the return of the sacks, freight prepaid, in good condition.

I spoke to Mr. Butchart over the telephone and he states that he will not quote Cement for your side of the line without your consent.

I understood the Northwestern Hardware Co. people to state that they had received some Cement from Santa Cruz, the quality of which would not satisfy the engineer at Bellingham.

Yours faithfully.

Diet. E.E.E."

"11th Decr, 1907. H.

John L. Howard, Esq.,
Care Western Fuel Co.,
430 California St.,
San Francisco.

Dear Mr. Howard: For your private guidance, I enclose copy of letter received today from Mr. E.E. Caine, with regard to the agency of the Superior Portland Cement Co. which explains itself. Mr. Caine apparently, is unaware that we are the local agents for the output of the Vancouver Portland Cement Co. who also protect us in quotations in the Upper Country otherwise, no doubt, he would not have approached us. I have replied to him that I contemplated being in Seattle on 21st inst. and will then be pleased to meet him, also the President of the Company, the object being to find out all the information I can. There fore if there is any information of importance you wish me to try and get, kindly write me on receipt.

It looks to me that with the erection of the above also the Washington plant, Mr. Dingee has missed his opportunity [376—122rr] and had I ever dreamt that he and DR. Bachman were going to act in the way in which they have done, in connection with the so-called Northwestern Portland Cement

Co. neither of them would ever have had a dollar of my money. Unfortunately, as I told you, we disposed of \$15,000. worth of bonds to friends of ours, who are asking for information about the company, and what is being done, and I am nonplussed, and would be glad to know whether you have any objection to my writing the Secretary of the Company direct, asking when the first meeting of shareholders is to take place: for a copy of the Balance Sheet: how many bonds have actually been sold: what has become of the proceeds of those sold, and what has been done in connection with the erection of the proposed works.

Candidly, I am suspicious that everything is not as it should be, and I suppose that if I asked these questions, I should probably get the stereotyped reply, which we are getting accustomed to, viz.: that the work is being delayed on account of the stringency in the money market, but if the \$750,000 had been put up, as I was led to believe that it had been, when our \$45,000 was put up, this should have nothing to do with it.

Trusting that you are well, and not over-working yourself,

Yours sincerely,

E.E.E.”

John L. Howard,	James E. Smith,	Jos. L. Schmitt,	D. C. Norcross.
Pres't.	Vice-Pres't.	Treas.	Sec't'y.

“WESTERN BUILDING MATERIAL COM-
PANY.

430 California St.

San Francisco, December 16, 1907.

Mr. Ernest E. Evans.

Vancouver,

British Columbia.

Dear Mr. Evans:

I am in receipt of your letter of the 11th December, and do not know that there is anything that interests us in connection with the Superior Portland Cement Company, excepting such general information as you may gather, and that you may be at liberty to disclose.

I agree with you that both Balfour, Guthrie & Co. and Bachman & Dingee, missed a golden opportunity at Kendall.

In the Summer of 1906, the Kendall scheme was a good and promising one, but I would never have bothered with it had I known that it would not have been pushed with the vigor that was promised.

My belief is that D. & B. were counting on an unbroken continuance of the good times that lead to the absorption of all kinds of securities, and they proceeded with the construction of the Atlantic Works in the east, and with the doubling of the Santa Cruz works here.

The unexpected pinch came, and it looks as though [377—122ss] the withdrawal of public purchases of bonds and stocks forced them to rely on their own

resources, and I have reason to know that they have been borrowers in recent times.

This is my theory.

Instead of writing to the Secretary, it would be better to address W. J. Dingee, President of Northwestern Portland Cement Company.

What I personally want to lead up to is their purchase of all the bonds that went through my hands, and I will try to deliver all the shares that passed to me.

This, if practicable, will get my friends out, and I will then find myself relieved of all kind of responsibility, moral and otherwise.

Yours truly,
JOHN L. HOWARD.

JLH."

"20th December, 1907. H.

John L. Howard, Esq.,
C/o Western Fuel Co.,
430 California St.,
San Francisco.

Dear Mr. Howard:

I am in receipt of your favour of the 16th inst., and on my return from Seattle, will let you know the result of the interview I had with Messrs. Caine and Eden, of the Superior Portland Cement Company.

I note all you write with regard to the Northwestern Portland Cement Company, from which it appears that the very thing has happened, which, if you refer to my letter of 11th of January last, you will see I asked you to protect me from, before making the investment, and consequently, I feel very sore.

I am well aware of the relations which exist between you and Mr. Dingee, which of course, I do not wish to disturb, and acting on your suggestion, I have written him, as per enclosed copy which I trust will meet with your approval.

I am pleased to note that you apparently take the same view as I do, viz.: that if it is at all times practicable to get the money back, it would be the best thing for all concerned, as I will gracefully pocket any loss which my personal friends may have incurred by making the investment, on my advice, and I should be very glad if you could bring this about.

Yours faithfully.

E.E.E." [378—122tt]

"John L. Howard,	James B. Smith,	Jos. L. Schmitt,	D. C. Norcross,
Pres't.	Vice-Pres't.	Treas.	Sec't'y.

“WESTERN BUILDING MATERIAL COMPANY.

430 California St.

San Francisco, December 26, 1907.

Ernest E. Evans, Esq.,

Vancouver,

British Columbia.

Dear Mr. Evans:

I have your letter of the 20th of December enclosing copy of yours to Mr. Dingee.

My relations to him are purely those of business, and no more intimate than can exist between the heads of two concerns with large and constant transactions. I have been him only in a month.

Dr. Bachman assured me that they had arrange-

ments for financing the Northwestern Portland Cement Company, and at that times they were so strong as to entitle their statements to credence.

Beyond their statement, there could have been no other proof than to see the books and the transactions completed.

What I have in mind is this, that I learned very confidentially that negotiations are under way for the sale of the B. B. and B. C. Railroad, and in the event that it goes through, I shall wire them to apply their part of the proceeds to the purchase of the Northwestern Portland Cement Company's bonds, especially those that passed through my hands.

In this way there would be no loss for you to stand such as you intimate.

Yours very truly,

JOHN L. HOWARD.

JLH."

"6th January 1918. M.

W. J. Dingee, Esq.,

President of Northwestern Portland Cement
Co.,

430 California Street,

San Francisco.

Dear Sir:

On 20th ultimo I wrote asking you for certain information in connection with the Northwestern Portland Cement Company to which I have had no reply, and in case the letter has gone astray, I beg to enclose a copy and shall be much obliged if you will

kindly answer the questions contained therein.

Yours faithfully.

E.E.E." [379—122uu]

“7th January 1908. H.

John L. Howard, Esq.,
C/o Western Fuel Company,
Nanaimo.

Dear Mr. Howard:

NORTHWESTERN PORTLAND CEMENT CO.

Yours namesake at Bellinghame, telephoned me yesterday morning, apparently in a great state of mind, stating that the men who had been working on the clearing, under Mr. Davis, the Engineer, and who were laid off two months ago had not received their pay, and some of them were still on the property waiting for it, practically on the verge of starvation, and were proceeding to file liens. He also informed me that several of the merchants of Bellingham, from whom goods had been purchased, had been interviewing both he and Mr. Purdy, and they distinctly stated that unless they received settlement of their claims forthwith, legal proceedings would be commenced.

Mr. Howard claims that he has communicated with the company, who have not had the common decency to reply, and his object in telephoning me was to ascertain your whereabouts, thinking that if you were advised of the situation, you would see that matters were adjusted without delay, as of course, he, Purdy, and others, in Bellingham are anxious to avoid publicity. I therefore wired you to this effect

and this morning have a telegram from Mr. Norcross stating that you would be in Portland all today and that he has sent a copy of the telegram to Mr. Dingee, who states settlement will be made before the 15th, and I have so advised Mr. Howard.

For your guidance, I have not received any reply from Mr. Dingee to my letter of 20th ulto. and I have again written him, as per copy enclosed. I do not believe for a moment that he did not receive my letter, and I am most anxious to discuss this business frankly with you, and shall be glad to know whether you propose returning home via Vancouver: if not, I will run over to Nanaimo one afternoon, which would be rather inconvenient just now, as Percy will not be back until some time next week.

Yours faithfully.

E.E.E.”

“WESTERN FUEL COMPANY,

Miners and Shippers
of

NEW WELLINGTON COAL.

Nanaimo, B. C.

Office of The Manager.

Ernest E. Evans, Esq.,

Vancouver, B. C.

January 10, 1908.

Dear Mr. Evans:

I have yours of 7th with enclosures:

Should Mr. Crosbie come to Nanaimo I will go home via Victoria otherwise I will visit him at Vancouver. In the latter case I will be there late in the

coming week. [380—122vv]

As to Mr. Dingee, I have seen him only twice since November. There was some tart correspondence over business matters between our two Companies. On One occasion he threatened to take away the agency if I carried out a threat and I told him to take it: He apologized. On Another he wanted us to adopt a wrong, a needless and an expensive (to us) policy in the south. I refused, and told him that we would prefer to cancel our contract.

But I did not know that things at Kendall had come to the pass indicated in Mr. Howard's statement to you.

This is wrong and it will be taken up immediately I reach home. I am surprised, that knowing you to be a shareowner and a Bondholder in the N. W. P. C. Co. he did not pay you the courtesy of a reply to your letter.

He has placed some of the bonds and shares about San Francisco; I do not know how many, but at times parties have spoken about having them.

But there is not the investment at Kendall to represent the amount I think he has received, to say nothing of the arrangements which he said he had for financing that project.

There are means open to interested parties to ascertain how much has been paid and what disposition has been made of it, and those means will be used.

Yours very truly,
JOHN L. HOWARD, Pres'dt."

“11th January, 1908. H.

John L. Howard, Esq.,
Care Western Fuel Co.,
Nanaimo.

Dear Mr. Howard: I was pleased to receive yours of 10th inst. and to see the stand you take with regard to Mr. Dingee. Mr. Crosbie advises me that he is not able to leave Vancouver, therefore I shall look forward to the pleasure of seeing you about the end of next week, when we can discuss as to what is the best thing to be done.

I am pleased to say that Percy turned up quite unexpectedly in the office yesterday, so after this I shall not be tied down and if necessary, about the middle of next month, will be able to go to San Francisco.

Yours faithfully.

E.E.E.”

“29th January 1908. H.

John L. Howard, Esq.,
C/o Western Fuel Co.,
430 California Street.
San Francisco:

Dear Mr. Howard:—Thanks for yours of 25th inst. with regard to [381—122ww] Mr. Kind of the Golden Gate Cement Company. The report that you heard about Mr. Kind’s visit to City Engineer Thompson at Seattle is correct, and he has refused to put this brand on his list again.

I have received no reply from Mr. Dingee to my last letter, which was sent from here under registered cover on 7th inst. I have today written to the Postmaster here to write to the authorities at San

Francisco to find out whether the letter was delivered; if so, when, and who signed for it. Not having had anything from you on the subject of the Northwestern Portland Cement Co. I presume that you have been so busy since your return that you have had *had* no time to see Mr. Dingee.

I regret that I shall be unable to get away from here before 22nd prox. and it is doubtful if I shall be able to get away then, but I intend going to San Francisco as soon as I possibly can, when, if I get no satisfaction in the meantime, I intend to get some satisfaction out of Mr. Dingee, even if I have to go to the expense and worry of getting it through the courts.

Yours faithfully,

E.E.E.”

“30th January 1908. H.

John L. Howard, Esq.,
C/o Western Fuel Co.,
430 California Street,
San Francisco.

Dear Mr. Howard:

I have just received your telegram asking if Mr. Dingee had made any reply to my letters; if so, to send copies; and I confirm my reply advising that I had heard nothing whatsoever from him. I wrote you fully on this matter last night, and am much interested to know what is going on.

Yours faithfully.

E.E.E.”

538 *Standard Portland Cement Corporation*

John L. Howard,	James B. Smith,	Jos. L. Schmitt,	D. C. Norcross,
Pres't.	Vice-Pres't.	Treas.	Sec't'y.

WESTERN FUEL COMPANY,

430 California St.

San Francisco, Cal. Jan. 30, 1908.

E. E. Evans, Esq.,

Vancouver,

British Columbia.

Dear Sir:

I enclose copy of a letter sent today by hand to Mr. Dingee. If he has not and does not reply satisfactorily to you, or if he does not answer my letter, then I want you to send me a piece of your stock, it does not make any difference for how many or how [382—122xx] few shares.

The point is this—

Under our Law any shareholder has a right to go into the office of any corporation and examine its books.

It has very frequently happened that a share-owner has appointed a person to do this, but out attorney (while knowing that this has been frequently practiced) is not altogether certain that an appointee has a right to demand an examination.

After the receipt of your certificate I would appoint a competent person, tell him to have the stock transferred to his name, and then he will endorse it and I will return it to you.

Such an appointee would have of course to be a person competent to examine corporation accounts.

When you send me this certificate, please write me a letter requesting that I shall transfer this to some

competent person, and requesting him in your behalf to make this examination.

I may tell you that on Saturday last I sent word to the Cement Companies, through their attorney, that we invited and would welcome a cancellation of our contract with the two Cement Companies.

This brought Dr. Bachman to me on Monday, and I repeated it to him. Although he showed a willingness to accept the situation I thought this was to a large extent simulated.

I gave them February 1st or March 1st as the date of separation, leaving it to them to decide. They will probably organize their own selling department.

It is too long a story to give you in a letter, but it has been culminating for the last forty days, and it grew out of the want of good business methods on their part in their treatment of our bills, and of claims for Cement that was alleged to be defective.

I could not stand the strain any longer and told them I wanted to quit.

We will, however, stay in the Cement business in some shape.

The Golden Gate Company got into trouble with the Mercantile Trust Company. The indebtedness I hear is over \$400,000. The Bank made them issue \$750,000 of bonds which they took, and forced the shareowners to put an equal amount of stock as a bonus. These bonds and this stock have all been taken.

Balfour, Guthrie & Company have subscribed for \$25,000. The Cement Company has further given an option for one year to the Bank to buy an addi-

tional \$750,000 of shares at \$60.00, and the Bank holds the voting power of the Company for two years.

It looks as though this furnishes them with \$300,000 of working capital, and the fixed charges are \$45,000 per annum. [383—122yy]

Yesterday when I asked Mr. Lawson if they were not in it he said, 'yes,' and 'that a year ago I thought the Scotchmen were too slow.'

They know all about the quiet condition of things at Kendall and it is a matter of common notoriety that Dingee is trying to borrow money everywhere. He will have to have a good deal of working capital when he undertakes to handle his own Cement product.

Yours truly,
JOHN L. HOWARD.

J.L.H."

"January 30, 1908.

Copy for Mr. E. E. Evans.

W. J. Dingee, Esq.,
Crocker Building,
City.

Dear Sir:

When in Vancouver recently I saw Mr. Ernest Evans, who was much concerned regarding the condition of the Northwestern Portland Cement Company's affairs at Kendall.

He said he had written two letters to you, and at that time had received no reply.

If you have not sent him the requested informa-

tion will you please do so, or if you like to send it to me I will forward it.

Yours truly.

JLH."

"POST OFFICE, 6,000-3-7-'06.

Vancouver, B. C., Feb. 1st, 1908.

My dear Sir: Referring to your letter of the 29th ulto., to the effect that a registered letter sent by you on the 7th instant, addressed to W. J. Dingee, San Francisco, Cal., has not been acknowledged I beg to inform you that a tracer has been issued and you will be duly advised of the result of our enquiries.

Yours very truly,

(Signature illegible.)

Acting Postmaster.

Messrs. Evans, Coleman & Evans.

Vancouver, B. C." [384—123]

"3rd February 1908. H.

John L. Howard, Esq.,

C/o Western Fuel Co.,

430 California St.,

San Francisco.

Dear Sir:

I have yours of 30th ulto. and as requested, beg to enclose certificate number 64, for 150 shares in the Northwestern Portland Cement Company, duly endorsed by me and my signature witnessed by a Notary Public. I also enclose, as requested, letter authorizing you to transfer this certificate to your nominee, with the request that you instruct him to

examine the books of the Company on my behalf.

I am much interested in all you write with regard to your relations with Mr. Dingee's cement Companies, but it will surprise me very much if they accept your resignation of the selling agency, as in these days of tight money, it will be very hard for them to get hold of anybody who will be able to handle and finance the product satisfactorily.

I note what you write with regard to Balfour, Guthrie & Co. and although Bailiee has not said anything to me, I feel practically sure that they know everything that is going on—in fact Dingee's financial position and his character are causing a great deal of comment in Cement circles in Seattle just now.

I am sorry to say that Percy has been in bed for very nearly ten days. The Doctor does not know exactly what is the matter with him, but it looks very much as if the illness may turn into typhoid fever. If so, this may prevent my going to San Francisco this month. However, I should know definitely early next week.

Yours faithfully,

E.E.E."

"3rd February 1908. H.

John L. Howard,
c/o Western Fuel Co.,
San Francisco.

Dear Sir:

I beg to enclose Certificate No. 64 for 150 ordinary shares of the Northwestern Portland Cement Co. Kindly transfer these shares to some competent person, and request him to proceed to the office of the

Company, and make an examination of the books, and ascertain how many bonds have actually been disposed of, to whom and the actual amount of cash realized from same, and what has become of it; also kindly instruct him to get a list of the shareholders with their names and respective holdings. After he has obtained this information, kindly have him endorse this *certifcate* and return to you, to be returned to me in due course.

Yours faithfully.

E.E.E."

“WESTERN FUEL COMPANY,

San Francisco, February 4, 1908.

Ernest E. Evans, Esq.

Vancouver, British Columbia. [385—123a]

Dear Mr. Evans:

I am in receipt of your letter of January 29th, and note that you may be able to leave Vancouver on the 22nd.

By this time you will have received my letter of Jan. 30th, and you will understand how matters are between Mr. Dingee and the writer.

I am a Shareholder of the Northwestern Cement Company, but as you know my shares are promotion shares.

I have a right to demand an examination of the books and accounts, but if I do so, it would give him opportunity to treat my demand in a different way than he would if it came from a bona fide investor of money.

I care nothing for the shares I own. He may have

them all if he will repay to my friends the money that they put into the scheme upon the faith of his promises to promptly build the plant.

He is not in a position at the present to do this, or to build. According to common street rumors he has borrowed all that he could get and is seeking more.

What greatly disconcerted me was this—

Since my return there came into my hands a copy of his Annual Statement of Standard Portland Cement corporation.

It was a meagre affair, and he did not hold a meeting of shareowners.

Among other things that would seem to need explanation to that company's shareowners and to us, was an item of liability of \$17,000 due to the Northwestern Portland Cement Company at Dec. 31st, and yet on November 1st he availed himself of the Governor's holidays to defer coupon payments until January, and at Dec. 31st the property of the Northwestern Portland Cement Company was threatened with liens for the non-payment of wages and supplies.

How can he reconcile his inability to pay the interest and wages of the Northwestern Portland Cement Company while another corporation under his control owed it money.

Therefore, not for myself but for my friends, I want to assist in having these matters looked into.

If you can come I can be of considerable service; if you cannot come, and you will carry out the sug-

gestion in my last I will start the business along.

Yours truly,

JOHN L. HOWARD.

J. L. H.”

“WESTERN FUEL COMPANY,

San Francisco, February 10, 1908.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Sir: I am in receipt of your letter of February 3, 1908, enclosing [386—123b] certificate #64 for 150 shares of Northwestern Cement stock.

I might add that the recent discussions with the Cement Companies have been conducted through Dr. Bachman, who assented to our proposal to separate.

On Saturday last Mr. Dingee, whom I had not seen since before I left for the North January 4th called for a requested interview, and strongly urged that the separation should not take place, agreeing that all past and existing causes for friction should be satisfied and removed.

I think that my associates will rigidly adhere to the purpose of separating.

Am sorry to learn of Percy's illness, and shall be glad to hear from you that he has improved.

Yours truly,

JOHN L. HOWARD.

JLH.”

"10th Feby. 1908. H.

John L. Howard, Esq.,
c/o Western Fuel Co.,
San Francisco.

Dear Mr. Howard:

I duly received your favor of the 4th inst. and note all you write with regard to Northwestern Portland Cement Co. It seems to me that there should be no delay in bringing this matter to a head, and what I would suggest is, that you call all your friends together, to whom you sold the bonds, and tell them frankly what your suspicions are, and arrange for some lawyer to go ahead on their behalf, on the understanding that they contribute pro rata to the expense according to their holdings of bonds. If Mr. Dingee has used the money other than for the purposes for which it was subscribed, I take it that he is criminally liable and that he should either be made to refund the money without delay, or failing this, criminally prosecuted. I understand that Mr. Sidney Smith is a Bondholder and Shareowner, and that he should know what is the best way to proceed.

At time of writing, I cannot say positively when I shall be able to leave here. Percy is still in bed, and I am afraid will not be fit for work for about two weeks, therefore, it looks to me as if it would be the end of the month at the earliest before I shall be able to get away.

Yours faithfully.

E.E.E."

“WESTERN FUEL COMPANY,

San Francisco, February 14, 1908.

E. E. Evans, Esq.,

Vancouver, British Columbia.

Dear Sir: Your certificate of stock that came to hand was placed with Mr. Wenzelburger a public accountant. [387—123c]

It is reported to me that he had it transferred on Tuesday or Wednesday and requested to see the books, and the young Secretary intimated that he did not know him.

His reply was that they did not need to know him, but that if they wanted to know him he could give them certain references, which he did.

He then called their attention to the section of the California State Code on the subject of exhibiting the records of corporation to bona fide shareowners, and told them that he would return in two days. We are now expecting to hear from him.

I am sorry to learn that Percy is still in bed, and hope that he will pull through in the time that you indicate.

I might say that on Saturday last Mr. Dingee asked for a reconsideration of our determination.

I called the Board together and the Directors reaffirmed their preference for a separation, and this was conveyed to him by letter. Today I have a note from him asking for a personal interview rather than writing to me, but some engagements and the need of going out of town, to remain perhaps until

548 *Standard Portland Cement Corporation*

Monday morning will prevent the meeting.

Yours truly,

JOHN L. HOWARD.

JLH.

P. S. The Expert has gone to the Cement office this P. M.

JLH."

"18th February, 1908. H.

John L. Howard, Esq.,
c/o Western Fuel Co.,
San Francisco.

Dear Mr. Howard:

Thanks very much for your favor of the 14th inst. from which I am pleased to note that Mr. Wenzelburger has started to make an examination of the books of the Northwestern Portland Cement Co. and I am awaiting with much interest the results of this investigation.

For your guidance, I enclose copy of letter which Mr. C. D. Rand of Vancouver, wrote to the Secretary of the Company, together with the copy of his reply which may be of interest to you.

I am pleased to say that Percy is progressing favorably, but the Doctor tells me that he will not be able to get out of bed with safety until the end of the week, and that it will be fully two weeks after then before he will be able to resume business; therefore it looks very much as if I shall not be able to leave here until about 4th prox.

Yours faithfully,

E.E.E." [388—123d]

John L. Howard.	James B. Smith.	Jos. L. Schmitt.	D. C. Norcross.
President.	Vice-President.	Treasurer.	Secretary.

WESTERN BUILDING MATERIAL CO.,

430 California St.

San Francisco, Calif. Feb. 27, 1908.

Ernest E. Evans, Esq.,

Vancouver, British Columbia.

Dear Sir:

Herewith certificate #196 for 150 shares Northwestern Portland Cement Company issued by A. Wenzelburger, and by him endorsed.

This is to replace the certificate which you sent for his use. Also a copy of the report of his examination of the Company's affairs.

You may digest this letter, and I expect to meet you here on my return from the east before you get away from San Francisco.

I leave on Monday A. M.

Yours truly,

JOHN L. HOWARD."

"4th March 1908. H.

John L. Howard, Esq.,

c/o Balfour Williamson & Co.,

82 Beaver Street,

New York.

Dear Mr. Howard:

I duly received yours of the 27th ult. enclosing certificate No. 196 for 150 shares in the Northwestern Portland Cement Co. endorsed by Mr. A. Wenzelburger, together with copy of this gentlemen's report. I have had no time to thoroughly go into same, but

the first glance shows me that my suspicions are more than confirmed, and that Messrs. Dingee and Bachman have been using the money for their own personal benefit, and according to the laws of this country are criminally liable, and if they were here, they would either have to make the money good within forty-eight hours, or they would be arrested.

I have arranged to leave here on 13th or 14th inst. and consequently am due at, the Fairmount Hotel San Francisco, on 16th or 17th, and as I presume that you will not be back until about 30th inst. I shall in all probability go down to Del Monte or the Potter at Santa Barbara, on 21st, and wait there until your return.

It seems to me that nothing is to be gained by waiting, and I shall be much obliged if you will write me to San Francisco, either c/o Balfours, or at your own office, whether I can do anything before your return. Do you think it advisable for me to call on Mr. Dingee and ask him why he has not replied to my [389—123e] letters, and for other information, and have you any objection to my consulting Messrs. Sidney V. Smith, J. L. Schmitt, and Robert Bruce, in the meantime?

Yours sincerely.

E.E.E."

John L. Howard,	James B. Smith,	Jos. L. Schmitt,	D. C. Norcross,
President.	Vice-President.	Treasurer.	Secretary.

WESTERN BUILDING MATERIAL CO.,

430 California St.

San Francisco, Cal., Mar. 28, 1908.

E. E. Evans, Esq.,

Vancouver,

B. C.

Dear Sir:

After conference with some of the subscribers of bonds of the Northwestern Portland Cement Company, I have arranged that the Standard Cement Corporation will take up the bonds that were subscribed for through the writer, and that corporation will issue in payments its notes for the face value of the bonds, payable on or before one year with interest at six percent payable semi-annually.

Will you, therefore, please send me your bonds and all the shares, and will give you receipt therefor, until I deliver you the notes as stated.

The Standard Portland Cement Corporation has authority by its Articles of Incorporation to buy and own securities in other corporations.

Its Board of Directors will authorize this step, and I shall be furnished with a certified copy of the authority to purchase. Mr. W. J. Dingee as President will endorse these notes.

Yours truly,

JOHN L. HOWARD.

J.L.H."

“13th April 1908. M.

John L. Howard, Esq.,
c/o The Western Fuel Co.,
430 California St.,
San Francisco, Cal.

#4

Dear Sir: Enclosed we beg to hand nine certificates covering 3,000 shares in the Northwestern Portland Cement Company, as follows:

No. 65 for 150 shares in name of Ernest E. Evans.

“ 66 “ 150 “ “ “ “ Do.

“ 68 “ 1000 “ “ “ “ Do.

“ 69 “ 150 “ “ “ “ Do.

“ 160 “ 30 “ “ “ “ Do.

“ 179 “ 50 “ “ “ “ Do.

[390—123f]

“ 180 “ 70 “ “ “ “ Adam L. Russel.

“ 188 “ 250 “ “ “ “ John L. Howard,
Trustee.

“ 196 “ 150 “ “ “ “ A. Wenzelburger.

Kindly acknowledge receipt and oblige,

Yours faithfully,

Dict. E.E.E."

“13th April, 1908.

#1

John L. Howard, Esq.,
Western Fuel Co.,
430 California Street,
San Francisco, Calif.

Dear Sir:

Enclosed we beg to hand you 10 bonds of \$1000.00

each of Northwestern Portland Cement Company,
numbered 128 to 137 inclusive. Kindly acknowledge
receipt and oblige,

Yours faithfully,

Dict. E. E. E.”

“13th April, 1908. M.

John L. Howard, Esq.,

C/o The Western Fuel Company,

430 California Street,

San Francisco, Cal.

#3

Dear Sir: Enclosed we beg to hand you 10 bonds
of \$1,000.00 each of Northwestern Portland Cement
Company, numbered 148 to 157 inclusive. Kindly
acknowledge receipt and oblige,

Yours faithfully,

Dict. E.E.E.”

“13th April, 1908. M.

John L. Howard, Esq.,

C/o The Western Fuel Co.,

430 California Street,

San Francisco, Calif.

Dear Sir: Enclosed we beg to hand you 10 bonds
of \$1000.00 each of Northwestern Portland Cement
Company, numbered 138 to 147 inclusive. Kindly
acknowledge receipt and oblige,

Yours faithfully,

Dict. E.E.E.” [391—123g]

“13th April, 1908. H.

John L. Howard, Esq.,
c/o The Western Fuel Company,
San Francisco.

Dear Mr. Howard:

I beg to advise having forwarded you in four separate envelopes under registered mail, 30 bonds of \$1000 each, also 9 certificates covering 2,000 shares in the Northwestern Portland Cement Company, and beg to enclose copies of letters put in the respective envelopes, and as arranged shall be much obliged if you will kindly hand these over in exchange for the Standard Portland Cement Company's note, endorsed by Mr. Dingee. Of course you will collect the interest in cash from the 1st of December, until the date of the note, as coupons covering interest up to 1st of May are attached to the bonds.

I am in communication with my friends Messrs. C. D. Rand and W. P. and E. H. Warner, who each hold \$5,000 in bonds and a like amount in shares, but I hardly expect to hear from the Warners under five or six weeks.

Yours faithfully,

E.E.E.”

“14th April, 1908. H.

John L. Howard, Esq.,
C/o The Western Fuel Co.,
San Francisco.

Dear Sir: Enclosed we beg to hand 5 bonds for \$100 each numbered 123 to 127 inclusive, in the Northwestern Portland Cement Co. endorsed by Mr.

Charles D. Rand of Vancouver, and we shall be much obliged if you will kindly exchange these for the Standard Portland Cement Company's notes for \$5,000 as arranged. You will observe that the interest coupons due on the 1st of May next are attached to the bonds, and we shall be much obliged if before delivering over these bonds, you will collect the interest from 30th November until date of the note, and we should also like you to see that the shares are transferred on the Register so as to get rid of the liability.

Yours faithfully,

E. E. E.2''

John L. Howard,	James B. Smith,	Jos. Schmitt,	D. C. Norcross,
President.	Vice-Pres't.	Treasurer.	Secretary.

WESTERN FUEL COMPANY,

430 California St.,

San Francisco, April 20th, 1908.

Mess. Evans, Coleman & Evans,
Vancouver, British Columbia.

Dear Sirs: I am today in receipt of your registered letters of April 13th and 14th, enclosing 35 bonds of the Northwestern Portland Cement Company and 2,000 shares of stock referred to in yours [392—123h] of April 13th. Also 50 shares referred to in yours of April 14th.

I note your remarks and will see that your instructions are carried out as soon as possible.

Yours truly,

JOHN L. HOWARD.

JLH."

(Testimony of John L. Howard.)

Cross-examination.

Mr. OLNEY.—Q. Mr. Howard, how soon was it that you received the promotion shares of the Northwestern Portland Cement Company that you had the same transferred into your name, or otherwise?

A. I never saw any shares until they came in my name, or my wife's name. I never saw that certificate; it is made out there in the name of Frank Losh. I don't know that I received certificate No. 11 for 9,000 shares. Let me see it. I don't think I ever had that.

Mr. OLNEY.—So far as the stock certificate book shows, it shows no stock certificate issued to Mr. Howard prior to January 5, 1907. Is not that correct? It will save putting in the [393—123i] whole stock certificate book to show it that is all.

Mr. BROBECK.—That is true. It is a matter of the weight of evidence.

Mr. OLNEY.—The fact is true.

Mr. BROBECK.—That is correct to this extent, that there is not in the stock journal any entry of any certificate having been issued to Mr. Howard prior to that date—to Mr. Howard *eo nomine*, but the suggestion is made by Mr. Young that a certificate was issued, No. 11, to Mr. Losh as trustee who held for Mr. Howard 9,000 shares.

Mr. OLNEY.—Mr. Young is not a witness here as yet, and furthermore he was not the secretary at that time, and does not know anything about it, and I would ask that that statement be not incorporated in the record.

(Testimony of John L. Howard.)

The MASTER.—Well, it is no proof whether it is in or not, and it is no proper party to any stipulation because it is a matter of proof. Now, what I understand that Mr. Olney wishes is just that fact, that by the stock certificate book and the stock journal and the ledger the first time that Mr. Howard appeared as a stockholder and the holder of legal title to stock on the books is January 5, 1907. Now, is that stipulation given?

Mr. BROBECK.—Yes, that is true.

Mr. DUNNE.—Being certificate No. 51 for 250 shares.

Mr. OLNEY.—Now, it is stipulated, gentlemen, that the bond issue of the Northwestern Portland Cement Co. was authorized by a meeting of the stockholders on November 3d, 1906.

Mr. DUNNE.—Yes, that is correct.

The WITNESS.—(Continuing.) I took no part in the San Francisco management of the Northwestern Portland Cement Co. as to the management of the company's affairs in the Northwest, I looked after the purchase of the properties and conferred with the lawyers and investigated the question of rod [394—124] for power and rates of freight for the product, and all those things. I did all of that with the assistance to some extent of Mr. Evans. That covers my activities in connection with the management of the Northwestern Portland Cement Company. I had nothing to do with the business here. I was constantly telling Mr. Dingee and Mr. Bachman and whoever happened to be in the saddle here

(Testimony of John L. Howard.)

at the time, what I did in the Northwestern in connection with these matters. I had nothing to do with their financial policy. I suggested many other things for example, calling all the product by the name of "Standard" which was in line with their consolidation scheme and such things as that kind. As to the consolidation scheme, Mr. Dingee and Mr. Bachman had it among their intentions to make one Company out of the Standard, the Santa Cruz and the Northwestern, after the Northwestern was built. The Standard Corporation was to be the parent Company.

Q. I will call to your mind the fact that you have testified that you learned sometime in November, 1908, that the shares of stock in the Bellingham Bay and British Columbia Railway which had been purchased by the Northwestern, had left the possession of the Northwestern. I will ask you if you were aware of that fact prior to the fall of 1908?

A. Not prior to the disclosure by one of the statements that came into my hands.

Q. When was that?

A. It was either the Wenzelburger statement, or a statement as I said this morning, that came out of the cement companies office, that was brought about—I think Mr. Young prepared it at the instance of Mr. McEnerney to show the status of the companies' affairs. It was at a time when I was thinking of going to the relief of the two cement companies; that was either in the latter part of October or the beginning of [395—125] November, 1908, just prior to

(Testimony of John L. Howard.)

Mr. Crocker taking over the management. This statement showed the location of the different bonds, where they had been put up for collateral, and one thing and another, and the different debts that were secured by Santa Cruz bonds. I learned at the same time that these Bellingham Bay bonds had been spotted—that is had been deposited as collateral with the American Bridge Company along with some other securities.

Q. That information was not in the Wenzelburger report, was it, that we have been speaking of here?

Mr. DUNNE.—He just testified that it was in that report or the Santa Cruz report.

A. I cannot tell the exact source of my information, but it was about that time.

Mr. OLNEY.—Q. The Wenzelburger report that we have been speaking about, was made in Feb., 1908.

A. I knew of it sooner than that. It was about the time of Dingee's general collapse that I got to know about it, which was in October or November, 1908.

Q. The Wenzelburger report was made in February, 1908, nearly a year previous. Now, I am asking you if you knew at that time, at the time of the Wenzelburger report, anything about the spouting of this stock?

A. I am not sure how I learned that first. I can probably trace it out accurately, but I cannot now from memory unassisted. I constantly carried to Mr. Dingee the complaints which were made by Mr. Evans in regard to the nonprogress of the work. I did not continue to carry those complaints while Mr.

(Testimony of John L. Howard.)

Wenzelburger was making his examination. When we turned Wenzelburger loose, we wanted to find out what the condition of the Companies' affairs as displayed by the books was. While he was at work, I did not think it was worth while to talk with Mr. [396—125a] Dingee very much. Then, after the Wenzelburger report came in, its business was to go to Mr. Evans. Then we learned that he intended to come here to discuss the contents with the rest of us and my recollection is that I refrained from going to Mr. Dingee about it until Mr. Evans came and there would be a consultation. From the time that the Wenzelburger examination commenced until the time of my interview with Mr. Dingee, at which the purchase of these bonds was arranged, I ceased conveying Mr. Evans' complaints to Mr. Dingee. I did not have very much to say. I think I had nothing to say to him on the subject from the time we started this investigation until after Mr. Evans came here.

Q. Did you ever at any time suggest to Mr. Dingee, or to Mr. Bachman, that they personally were either civilly or criminally responsible to the bondholders or stockholders of the Northwestern Portland Cement Company? A. I do not think I did.

Q. At the time of the purchase of the bonds of the Northwestern Portland Cement Company by the Standard Portland Cement Corporation, was anything said by Mr. Dingee as to the plans of the Standard Portland Cement Company relative to the Northwestern?

A. I do not recall that he said anything at that

(Testimony of John L. Howard.)

time, but he and Bachman had frequently spoken of it before.

Mr. DUNNE.—I move to strike out the latter half of the answer, on the ground that it is not responsive to the question.

The MASTER.—The motion is denied.

Mr. DUNNE.—We note an exception.

The WITNESS.—(Continuing.) At the time of the purchase of the bonds by the Standard Portland Cement Corporation, the Standard Portland Cement Company was practically defunct; it had been absorbed by the Standard Portland Cement Corporation sometime [397—126] before.

Q. Mr. Howard, I will ask you, if as a matter of fact, Mr. C. W. Howard did not do most of the law work affecting the title to the 80 acres which you took in your own name.

A. In connection with putting a Placer claim file on in the name of Mr. Hyatt he did all of that kind of work; but the original filing by me was done through Mr. Randolph. On the hearing before the United States land office in Seattle it was conducted by him; the fight in Washington, whatever fight there was, before the Commission of the General Land Office, was conducted by him, and when it came back approved, he handled it and finally I got word that the patent was in the Seattle land office and I attended to that myself. But that part in connection with my getting the title, Randolph did it all. I think his name is Frank Randolph. He is not my counsel in that section of the country. I was simply

(Testimony of John L. Howard.)

referred to him to make this filing. His work ended just as soon as the Commission of the land office decided in my favor.

D. C. Norcross is Secretary of the Western Fuel Company and has been such secretary since the promotion of the company in 1903. D. C. Norcross is the Secretary of the Western Building Material Company and has been such secretary since the promotion of the company in 1906.

Q. I call your attention to "Complainant's Exhibit 2," and to the letter therein by the Standard Portland Cement Company to the Western Fuel Company, dated March 8, 1906, and to the assignment therein dated June 30, 1906, by the Western Fuel Company to the Western Building Material Company of the sales contract between the Western Fuel Company and the Standard Portland Cement Company, and to the consent therein of such assignment by the Standard Portland Cement Company, and ask you what is the explanation of the provision in the letter and assignment [398—127] to the effect that the sales contract may at any time be terminated at the option of the Standard Portland Cement Company in case you yourself should cease at any time to be the chief executive officer of the Western Fuel Company or the Western Building Material Company?

Mr. DUNNE.—We object to the question upon the ground that the question and the evidence or testimony sought to be elicited thereby are immaterial, irrelevant and incompetent, not proper cross-exam-

(Testimony of John L. Howard.)

ination, without foundation in this, that it does not appear that the witness knows, and attempt to vary the terms of a written instrument by patrol evidence.

The MASTER.—The objection is overruled.

Mr. DUNNE.—Exception by the complainant.

A. It happened that on the day when the directors of the two cement companies were to meet to accept these contracts, I mean the Santa Cruz and the Standard companies' directors were to meet, to accept these contracts from the Western Fuel Company—

Mr. OLNEY.—Q. (Intg.) At this point Mr. Howard, permit me to interrupt you and ask you if the sales contract and the papers marked "Complainants' Exhibit No. 3" and the contract being the contract between the Western Fuel Company and the Santa Cruz Company, with the papers attached thereto, the transactions were simultaneous.

A. Yes; and the same provision is, of course, found in the papers relative to the Santa Cruz contract.

Q. Now, will you make your explanation covering both contracts and both exhibits?

Mr. DUNNE.—May it be stipulated that both ruling and exception apply to this whole line of testimony?

Mr. OLNEY.—Yes.

The MASTER.—It may be so considered.

Mr. BROBECK.—And may I inquire whether this is an [399—128] attempt to question the validity or binding force of that qualification of the contract?

(Testimony of John L. Howard.)

Mr. OLNEY.—Not at all.

WITNESS.—(Continuing.) It happened that on the day when these cement companies' directors were to meet to approve and accept these contracts, I lunched with Mr. Dingee, and on the way back from the Pacific Union Club, I called into his office to finish the conversation that we had begun and he told me that the directors were about to meet and notified me to be present. It was the only time I was ever present at any of the meetings of the cement Board. At that meeting there were present Mr. Dingee, Dr. Bachman, Judge Henshaw and Mr. Losh and I think Mr. A. F. Morrison. When the terms of contract were read to my great surprise I found that there had been engendered a very bitter feeling on the part of Mr. Dingee, Dr. Bachman and Judge Henshaw against the vice-president of our company, and there was an immediate insistence on their part to incorporate in the contract a clause in substance very much like the one in these papers. I discussed it with them and tried to prevail upon them not to do it and they then gave me the reason for wanting to do it, and they so far listened to my recommendations as to keep it out of the body of the contract but write a separate and independent letter. I never heard of this thing before that time and did not know until then anything about it.

None of the directors or officers of either the Standard Portland Cement Company, the Standard Portland Cement Corporation, the Santa Cruz Portland Cement Company or the Northwestern Portland

(Testimony of John L. Howard.)

Cement Company ever have been officers or shareholders in the Western Fuel Company. I have never been an officer of the Northwestern Portland Cement Company. I testified that certain bonds of the Northwestern Portland Cement Company were purchased from it by certain friends of mine through [400—129] me; beyond that I had nothing to do with authorizing, creating or incurring the bond indebtedness of the Northwestern Portland Cement Company. The Northwestern Portland Cement Company and the Standard Portland Cement Company and the Standard Portland Cement Corporation were independent corporations; they were distinct corporations. The parties managing them were the same, but there must necessarily have been different owners, that is, some in one company might not have been in another; they had different sets of stockholders. I learned through the report of an accountant who was put on the books what became of the moneys which were realized from the proceeds of the bond issue of the Northwestern Portland Cement Company, and only in that way; I refer now to Mr. Wenzelburger's report and that is the first source of information that I had as to where those moneys went. After that I did not get any further information from any of the parties to this suit as to where this money went. I testified yesterday that the first information I had as to the diversion of Northwestern funds from the purposes of that company were derived from the Wenzelburger report, and that after that I had conversations with Mr. Din-

(Testimony of John L. Howard.)

gee about this diversion of funds; I had those conversations with Mr. Dingee in the latter part of the year 1908. I did not have any conversation with Mr. Dingee relative to the diversion of Northwestern funds up to and including the time of the purchase of the bonds of the Northwestern Portland Cement Company by the Standard Portland Cement Corporation in May, 1908. I had nothing whatever to do with the diversion of the funds of the Northwestern Portland Cement Company. I got a statement purporting to represent the condition of the Santa Cruz Portland Cement Company dated October 29, 1908. The information I then had was that it had been prepared under the supervision of Mr. Young and at the instance of Mr. McEnerney. At that time I was figuring on going to the relief of [401—130] the cement companies and this statement was given me for the purpose of acquainting me with the extent and character of the indebtedness and while tabulating that indebtedness I ran across the fact that the shares of the Bellingham Bay and British Columbia Railroad had been put up as collateral, among other things for debts due the American Bridge Company—debts due by the Santa Cruz Portland Cement Company to the American Bridge Company. This is now my positive recollection as to my first information that the shares of the Bellingham Bay and British Columbia Rd. Company belonging to the Northwestern Portland Cement Company had been diverted to other uses and it was after the receipt of this report that I talked at all with Mr. Din-

(Testimony of John L. Howard.)

gee about the diversion of funds. The trial balance of the Northwestern Portland Cement Company, attached to the Wenzelburger report shows the investment in these shares but not that they had been diverted from the Northwestern in any way. I knew that Mr. Dingee intended to purchase these shares at the time of their purchase, and at the time he was doing it I knew it—I refer now to the Cornwall interest, and until I saw the report of accounts of the Santa Cruz Portland Cement Company in November, 1908, I supposed that these shares were still in the treasury of the Northwestern Portland Cement Company, and I was quite astonished to find what had been done with them. I testified either in my deposition or upon direct examination here that I had been informed that the shares had been pledged for the notes of the Atlantic Portland Cement Company but that was a temporary mistake. I knew it was the Santa Cruz by this statement which has refreshed my memory, and which was the source of my information. It is represented on this statement that the stock of the Bellingham Bay and British Columbia Railroad was pledged by Mr. Dingee for the obligations of the Santa Cruz Portland Cement Company alone, and that is all the knowledge I had at that time. I took up with Mr. Dingee the [402—[131] discussion of the diversion of this stock, I was astonished to find that it could be pledged as collateral, it belonging to the Northwestern Portland Cement Company, and I learned that the stock had been issued in his name, either William J. Dingee, or

(Testimony of John L. Howard.)

William J. Dingee, trustee, and I wanted to find out why it was done, and he told me it was done in the presence of Mr. Young, and Mr. McEnerney and Dr. Bachman, and a Mr. Connell who was the representative of the Bridge Company. That was the explanation I got. I did not know at that time that this stock was also pledged for the obligations of the Atlantic Portland Cement Company to the American Bridge Company. I don't think I know that it was pledged for the Atlantic. I know there is a \$182,000 debt and \$300,000 of Atlantic bonds are up and 4,000 shares of Standard stock and this Bellingham Bay and British Columbia Railway stock. I did not go far enough into the transactions at that time to be shown by Mr. Dingee the instrument under which that stock was pledged. I never saw the pledge agreement and did not know anything about it. I was not familiar with the adjustment of Dingee's difficulties at the time of his collapse. This \$182,000 debt that I spoke of, I heard discussed, but I am not sure whether it is Atlantic or Santa Cruz. What I meant to convey was that the first information I had that these shares were spouted appeared to be on this statement of the Santa Cruz indebtedness; this expression "spouted" is equivalent in the expression pledged. The Western Fuel Company or the Western Building Material company at my instance purchased 19 bonds of the Northwestern Portland Cement Company at the time of the purchase by Dingee of the Cornwall interest in the Bellingham Bay Railroad, and I did that for the purpose of making up

(Testimony of John L. Howard.)

the amount which Mr. Dingee required, to purchase that stock; he said that he was short about that amount, and we gave it and took the bonds; thereupon I knew that Dingee had acquired, or the Northwestern Portland [403—131] had acquired that stock with this money; and I became the vice-president of the Bellingham Bay Railway in virtue of Dingee's or the Northwestern's ownership of that stock. I do not remember now how long afterwards I became such vice-president. I am not the vice-president of the Bellingham Bay Ry. now. I did not resign. I was not re-elected. The unfortunate meeting which eliminated me from the Board of Directors was in the beginning of 1910; I think it was the annual meeting; I think I was not there for about a year. I had no stock myself in the Bellingham Bay and British Columbia Ry. There was some stock put in my name to qualify me by Mr. Dingee. At the time I was considering the assets of the Northwestern Portland Cement Company in order to advise and act for Mr. Evans in the determination as to whether they should continue to retain these bonds or not, or whether they should insist upon these bonds being taken up by some other and as I regard it more responsible party; I had not then learned that the Bellingham Bay stock had been pledged at the instance of Mr. Campbell to secure the indebtedness of the Santa Cruz and of the Atlantic Portland Cement Companies to the American Bridge Company. I learned it here; as to whether I did not learn that this pledge had been made in conversations

(Testimony of John L. Howard.)

with Mr. Young prior to that time, and at the time of the reapproachment of all these matters, my recollection is that my first knowledge came to me from this statement, and this statement was furnished through Mr. Smith by Mr. McEnerney from the cement companies' office in order to let me study the situation to see whether I would feel justified in enlisting my friends to go to the relief of the cement companies; and in tabulating this indebtedness I came to know, as I remember it, for the first time, that these shares had been pledged for the debts of the cement companies other than the Northwestern.

Mr. BROBECK.—Q. Now, let me recall another circumstance [404—132] to your memory; you will recall that in the month of December, 1907, when Evans and his people were beginning to get nervous about their securities, and were beginning to hammer you and Mr. Dingee on the point that they were not having the plant built and so on that you wrote them telling them at that time that you anticipated that the Bellingham Bay Ry. would be disposed of and that it would be possible to realize something on their bonds from the disposition of that stock; do you recall that?

The WITNESS.—You mentioned Mr. Campbell's name; Mr. J. C. Campbell, I did not know anything about his connection with the Bridge Company, This letter which you show me, written on the letter-head of the Western Building Material Company under date of December 26, 1907, addressed by me to

(Testimony of John L. Howard.)

Ernest E. Evans at Vancouver, appearing at page 227 of my deposition, is not very long. (Reading:)

“I have your letter of the 20th of December, enclosing Copy of yours to Dingee.”

That was at the time that Mr. Evans was trying to get some information.

Mr. BROBECK.—Q. As I suggested, about the time he began to hammer you and Mr. Dingee about his securities.

A. (Reading:)

“My relations to him are purely those of business and no more intimate than can exist between the heads of two concerns with large constant transactions. I have seen him only in a month”—

that means once a month I guess. (Continuing reading:)

“Dr. Bachman assured me that they had arrangements for financing the Northwestern Portland Cement Company, and at that time they were so strong as to entitle their statements to credence. Beyond their statement there could have been no other proof than to see the books and the transactions completed. What I have in mind is this, that I learned very confidentially that negotiations were under way for the sale of the Bellingham Bay and British Columbia Rd. and in the event that it goes through I shall urge them to apply their part of the proceeds to the purchase of the Northwestern Port-

(Testimony of John L. Howard.)

land Cement Company's bonds, especially those which passed through my hands. In this way there would be [405—133] no loss for you to stand such as you intimate.

Yours very truly,

JOHN L. HOWARD."

Q. That letter recalls to your mind, does it, the fact that you were considering the possibility of these bonds being sold and some payment at least being made on account of the redemption of bonds which you had placed?

A. If you will let me explain the letter, I will.

Q. Yes.

A. Mr. Evans had become nervous over getting no information from Mr. Dingee, no replies to his letters; when I refer to confidential information, it meant that either from Mr. Taylor or Mr. Dingee I learned that negotiations were under way for the sale of the Bellingham Bay and British Columbia Railroad. Now, then the Northwestern Portland Cement Company, owning a lot of that stock, of course, get its proportion of the proceeds of this sale, *would*, and I intended to go to Mr. Dingee and tell him in case that it had gone through, to take up these bonds that had gone through my hands and that Mr. Evans was writing about. That is practically what the letter says.

Q. Now, having in mind the possibility that the anxiety of your friends would be relieved—

A. (Intg.) It was Mr. Evans.

Q. (Continuing.)—through the sale of these shares

(Testimony of John L. Howard.)

of that stock, and having had—

Mr. OLNEY.—(Intg.) It was not a sale of the shares, it is a sale of the railroad.

Mr. BROBECK.—Well, the same result would work out. He refers to the sale—I don't know whether he refers to the sale of the railroad or the shares.

The WITNESS.—The railroad.

Mr. BROBECK.—Well, it is immaterial. (Continuing) —and having attached that importance to the possession by this cement [406—134] company of these shares of stock and having placed reliance evidently upon a realization upon those shares of stock in order to help you and Mr. Dingee to meet the demands of these gentlemen who thought they had been buncoed in taking these bonds, you still tell us, do you, Mr. Howard, that these shares, pledged—went out of the possession of that company and were with the American Bridge Company, without any knowledge on your part of that transaction?

A. I did not know anything about the pledging of the Bellingham Bay and British Columbia Railroad shares until this statement came into my hands; that was in November, 1908.

Q. Yesterday, under examination by Mr. Olney, you testified, after having it suggested by him, that it was in November, 1908, that you had knowledge of the pledging of this stock, the question being: "Q. I will recall to your mind the fact that you have testified that you learned some time in November, 1908,

(Testimony of John L. Howard.)

the shares of stock in the Bellingham Bay and British Columbia Ry. which had been purchased by the Northwestern had left the possession of the Northwestern; I will ask you if you were aware of that fact prior to February, 1908? A. Not prior to the disclosure by one of the statements that came into my hands. Q. When was that? A. It was either the Wenzelburger statement or a statement, as I said this morning, that came out of the cement companies office which was brought about—I think Mr. Young prepared it at the instance of Mr. McEnerney to show the status of the companies' affairs. It was at a time when I was thinking of going to the relief of the two cement companies. Q. When was that, at what time? A. That was either in the latter part of October or the beginning of November, 1908, just prior to Mr. Crocker's taking over the management. This statement showed the location of the different bonds, where they had been put up for collateral, and one thing and the different debts which were secured by the Santa Cruz bonds. [407—135] I learned at the same time that these Bellingham Bay bonds had been spouted, that is, had been deposited as collateral with the American Bridge Company along with some other securities. Q. That information was not in the Wenzelburger report, was it, that we have been speaking of? Mr. Dunne: He testified that it was either in that report or the Santa Cruz. A. I cannot tell the exact source of my information but it was about that time. Mr. Olney: Q. The Wenzelburger report that we have been speaking about

(Testimony of John L. Howard.)

was made in February, 1908. A. I knew of it sooner than that. It was about the time of Dingee's general collapse that I got to know about it which was in October or November, 1908. Q. The Wenzelburger report was made in February, 1908, nearly a year previous. Now, I am asking you if you knew at that time, at the time of the Wenzelburger report, anything about the spouting of this stock. I was not sure how I learned that first. I can probably trace it out accurately but I cannot now from memory unassisted. Q. I will ask you if you can between now and the next session look that up." Do you remember that statement yesterday? A. Yes, I do.

Q. Now, it appeared at that time that you were in doubt whether you learned of that at the time of the Wenzelburger report or whether you learned of it later?

Mr. OLNEY.—I object to that upon the ground that it assumes something that is not the case.

Mr. BROBECK.—I submit, if your Honor please, after being twice told by his counsel that he learned it in October, 1908, the witness still persisted in the doubt that he had learned it at the time of the Wenzelburger report.

The MASTER.—The objection is sustained.

Mr. BROBECK.—We note an exception.

Mr. OLNEY.—Q. Mr. Howard how many interviews did you [408—136] have with Mr. Dingee in the matter of the purchase of the stock and bonds of the Northwestern Portland Cement Company by the Standard Portland Cement Corporation?

(Testimony of John L. Howard.)

A. Two. The second interview was, I think, during the same half day with the first interview. The first interview lasted a few minutes—I should say 5 or 10 minutes, perhaps; I don't think it was over 10, probably not that long. The second interview lasted a short while, a few minutes, about the same—5 or 10 minutes.

Redirect Examination.

In my examination yesterday I made a statement that I was thinking of going to the relief of the two cement companies, the Standard and the Santa Cruz. They were heavily in debt, and I was trying to ascertain their financial condition to see whether with the prospects ahead there was a justification in raising capital to relieve their indebtedness and take over the management from Mr. Dingee. I had an interview with Mr. Crocker about it. I told him what I was trying to do and of the people who were thinking of going in with me and asked him what his attitude would be. He said he wanted his money. *He said he wanted his money.* I didn't feel like taking the first step unless I knew the actual financial condition of the concern, and I didn't think the statements that I had justified taking the first step because I thought that meant going through with it and I didn't have the time to have a critical examination made of the companies' affairs, and so I dropped it.

Q. The depressed financial condition of these two corporations at that time, in the fall of 1908, was not a matter of sudden growth, was it, but it had reached back into the past history of these corpora-

(Testimony of John L. Howard.)

tions for some time, had it not? A. In the case of the Santa Cruz it was largely due to over expansion and largely due to [409—137] the inferior quality of the cement they furnished. And this over-expansion, this enlarging of the Santa Cruz plant, was [410—137a] one of the consequences of the disaster of 1906. The first discussion that was had was to increase it 50%, and Dr. Bachman went east, and I was told, arranged for the machinery to double the capacity. This instance occurred in the year 1906, I think, the resolution was taken then, but the expenditures were made during the year 1907, and then the financial stringency came in 1907, and they began to make cement in 1907 and it was not acceptable for about a year, which would carry us along until the summer of 1908. From anything I knew I did not think the Standard Portland Cement Corporation was in very bad shape; they had reduced their indebtedness, as I was informed by Mr. Dingee, from \$500,000, which was the original bonded indebtedness, to something like \$271,000. They had been running regularly and steadily and their cement was, generally speaking, excepting at some intervals, satisfactory and they made a good deal of money. I had no information as to the floating indebtedness of the Standard Portland about that time, until I got these statements which I received in line with my general purpose of going to the assistance of these two corporations, which general purpose was subsequently dropped by me.

With reference to that debt of \$182,000 which I

(Testimony of John L. Howard.)

referred to a moment ago, just let me set the whole thing right, Mr. Dunne: what I wanted to tell you was that my information as to the fact of the placing of the Bellingham Bay and British Columbia Rd. shares was gotten from this statement that came into my hands during the investigation I have spoken of. I had forgotten all about the details connected with that, but in connection with some discussions about the Atlantic Portland Cement Company in which I am interested—I have some of the bonds—I learned that there is a debt due the American Bridge Company of \$182,000 plus interest, and for that debt there are pledged 300 Atlantic bonds and 4,000 shares of Standard stock. And the shares of the [411—138] Bellingham Bay and British Columbia Rd: I am told that they are these three bunches of collateral upon that debt. These discussions at which I got that information as to which I have just testified were all subsequent to the receipt by me of this Standard and this Santa Cruz statement—within the last year or two while I have been in New York. I received a statement showing the condition of the Standard Portland Cement Corporation at the same time I received this. I think I have that down in the pigeon-hole and if you want it I will bring it. I will send it out this afternoon by Mr. Norcross.

[Testimony of Frederick Davis, for Complainant.]

Thereupon Mr. FREDERICK DAVIS was called as a witness on behalf of the complainant, and after having been first duly sworn, testified as follows, to wit:

Direct Examination.

I am a civil engineer and have been such since 1893. I have practiced my profession in New York City, Central America, California, State of Washington and also in Washington, D. C. I know the place called Kendall, in Whatcom County, in the State of Washington. I was there for about 18 months. I went there in April, 1907, and I left there in September, 1908. I was engineer there for the Northwestern Portland Cement Company. I am familiar with the property owned or claimed to have been owned or controlled by the Northwestern Portland Cement Company at Kendall, in Whatcom County, in the State of Washington; and this blueprint which you exhibit to me is an accurate blueprint of the properties with which we are concerned here. These photographs which you exhibit to me are accurate photographs of the properties there; they were taken after we had been working just about a year; they were taken in the early part or middle of the year 1908.

Thereupon said photographs, three in number, were received in evidence in this cause without objection, and were marked by the Master as Complainant's Exhibits 8-9 and 10, respectively. **[412-139]**

The WITNESS.—(Continuing.) Included in the

(Testimony of Frederick Davis.)

properties there were 13 quarter sections each containing 40 acres; and these 13 quarter sections of 40 acres each represent the total of properties of the Northwestern Portland Cement Company at Kendall, Whatcom County, Washington. As one stood and looked at the country there, it was flat all except the four upper sections which were located on the side of the hill, and that hill extended up about 1200 feet, and about 1000 feet was hilly and rocky. There was a valley there. The flat sections were in the valley. The valley was about a mile and a half wide, and it arose in hills on the other side also. Four of these quarter sections were up on the side of the hill, about 1200 feet—the four that they called the Reidle claims, which were 20 acre claims in the southwest quarter of section 23, named Mt. Baker, Mt. Olympia, Mt. Rainier and Mt. Hood, each of these claims were 20 acres. Below these claims, coming down the hill toward the flat, toward the place marked Zender, there are 4 claims belonging to Mr. John L. Howard, the area of each of which is 20 acres.

As to the amount of development work upon the claim marked "Mt. Olympia," we cleared a certain amount of it around these exposed ledges, we cleared the timber land off. The amount of clearing that was done on the Mt. Olympia claim, expressed in acres, was $4\frac{1}{2}$ acres. The amount of development work or clearing done on the Mt. Baker claim was 4.73 acres; on the Mt. Hood claim .83 of an acre; and on the Mt. Rainier claim 1.99 acres. The total amount of clearing that was done in the way of de-

(Testimony of Frederick Davis.)

veloping those claims, adds up 12.14 acres.

These claims, which were some 1,200 feet up from the level, were absolutely worthless for agricultural purposes; it was too high to get up there and too steep, and the soil was rocky; there [413—140] was no soil you could cultivate anything on. The next 80 acres which I have referred to as being the Howard claim were likewise steep in the same way, and all rocky land, covered with timber, and worthless for cultivation of any kind. As to the development work done in these four claims which I describe here as the Howard claims, there was a little shack built on Howard claim No. 2, counting from the left side as you face the Reidle claim, and a man was living there, but there was no other evidence of development upon those claims.

Coming down from these claims to the lower portion where the cement plant of the Northwestern Portland Cement Company was to be installed, we cleared about 60 acres, and about 40 of these acres were grubbed. By "clearing" we mean slashing, felling the trees and piling them up, while "grubbing" is pulling up the stumps and clearing everything off absolutely clean. The total amount of development work there was that 60 acres were cleared and only 40 were grubbed. Taking the entire tract of land of the Northwestern Portland Cement Company, its general characteristics, looking at it from the point of view of agriculture, were very poor. The 40 acres that we grubbed were nothing but a mass of rocks when we got through with it, abso-

(Testimony of Frederick Davis.)

lately no top soil on it at all. In the course of my duties up there, I had occasion to go over the other portions of the properties of the Northwestern Portland Cement Company, and I found that there were places that were so that you could cultivate them. These places included 1-40 acre piece, the piece marked "Zender" grass-land, and when I came there that was pasture land; there was another little piece available for cultivation including 20 acres, and also the first 40-acre piece that the spur track passes through after leaving the main line of the railroad might be utilized for cultivation, although that was rather sandy soil, sandy and full of small roots, but yet it [414-141] might be used for a pasture. When I reached there the only cultivation carried on by anybody on this property was in this Zender farm. Zender had a pasture there and I think he had perhaps 25 or 30 cows—by this pasture land I mean the 40 acres marked "Zender Grass Land," and also the 20-acre patch in the portion marked "Zender"—around the lake there, I should imagine that he had about 60 acres that he could use for grazing. The only other cultivation visible by Zender at that place was a little potato patch and perhaps 30 or 40 fruit trees, peaches, prunes and apples. As to whether, aside from this cultivation that I mentioned, I observed any cultivation anywhere else on the tract, the man in the little cabin on the Howard claim had a little potato patch, perhaps 20 ft. by 30 ft. That is about all the cultivation that I remember.

(Testimony of Frederick Davis.)

Q. Where, if you know, did Zender, the farmer on these premises, secure the hay for his cattle?

Mr. OLNEY.—I object to that. It is immaterial.

Mr. DUNNE.—We think it is a circumstance illustrating the magnificent agricultural value of the valley if we can show that he could not raise hay for his own cattle but had to go abroad to buy it.

The MASTER.—The objection is overruled.

A. He used to buy it in Bellingham. When I went there to take charge of this property I employed labor. Most of these laborers were the farmers of the district there. We paid them \$5.00 a day for driving a team; \$5 or \$6, I am not sure which.

Q. And during those times their farms, of course, were neglected, were they?

A. They made more money teaming than they did on their farms. In the winter the sun would rise there about 7 to half-past seven, and it commenced to get dark between half-past 3 and 4; and there were four or five months in the year that way.

I found lime deposits on this property on the upper [415—142] claims; that is, two of the upper Reidle claims, Mt. Baker and Mt. Olympia, and two claims just below that belonging to Mr. Howard—the first and the second Howard claims. Aside from these lime deposits, I did not find any lime deposits anywhere else on this territory.

Q. Now, let me ask you whether you performed any experimental work up there for the purpose of determining the extent of the lime deposits which were visible.

(Testimony of Frederick Davis.)

A. We had to spend \$500 in assessment work on each of these claims in order to complete the assessment work, and that amount of money was spent in clearing and trying to find out what was on those claims. That is all that was spent there, \$500 on each 20 acre claim. If I were endeavoring to ascertain whether that was a mere surface indication, or whether that alleged lime deposit had any depth or spread to it, I would perform experimental work to assist in determining that question. I would put tunnels in, and I would do diamond drilling there. I did not do any diamond drilling there at all. Such exploration work was one on the opposite of the valley on the lands belonging to Balfour Guthrie & Company; for the purpose of determining the character and extent of their lime deposits, they put down several diamond drill holes, I could not say how many, and they also drafted a tunnel into the rock—I think it was about 150 feet long. There is a difference in this matter of lime development for cement purposes between what is known as a drill hole and what is known as a test hole; a drill hole is when you drill down, and a test hole is when you dig with pick and shovel. We dig a test hole with pick and shovel as deep as we can. Of course we could not dig 150 feet with a pick and shovel. With a machine or a diamond drill, or something of that kind you can go down 150 or 200 feet. That is what Balfour, Guthrie & Co. did, but no such experimental work as that was done on the premises [416—143] of the Northwestern Portland Cement Company, to my

(Testimony of Frederick Davis.)

knowledge, and I was the supervising engineer there.

Q. Taking into consideration, then, your knowledge of the property itself and your observation of these lime deposits there, could you form any judgment at that time as to the extent or capacity of those lime deposits?

A. No, I could not form an estimate as to how much rock was there; the character of the ground showed outcroppings on perhaps 60 acres, but how far that rock went down I could not say.

I have had experience in the manufacture of cement for about three years, and I am familiar with the methods of making cement and its component parts. I am employed as assistant superintendent of the Santa Cruz Portland Cement Company and have practically full charge of the running of that plant. I have engaged in the cement business just since I left the Northwestern. At the time I was up at the Northwestern, I had had no previous experience in the cement business. I came out as constructing engineer for the Northwestern Company, to put up the plant. My experience has been along the line of a constructing engineer, which was my profession up to that time. While I am not a chemist, I am acquainted in a general way with the constituent elements of cement, although I was not at the time I came out for the Northwestern. Bearing in mind my familiarity with the property of the Northwestern Portland Cement Company at Kendall, and my observation and knowledge of the lime deposits there, in my judgment, the deposits there

(Testimony of Frederick Davis.)

were not of a character to authorize the erection of a plant of any particular capacity without further exploration, but no further exploration was made. I know how large a plant was to be erected there; the plant to be erected there was to be practically a duplicate of the Santa Cruz Portland Cement Co. which would be a 5,000 barrel per day plant with what they call an [417—144] extension adequate to 10,000 barrels per day. We intended to put up half of the unit first, so as to manufacture 5,000, and then double the capacity to 10,000. I mean that it was to be a plant built in such a way that it would be a 5,000 barrel per day plant in immediate contemplation with the possibility of doubling it afterwards. Each building had what they called an extension, and you could just double it over and make it twice as large. If you look at this building here, that is the building that would go up. This dotted line is what they call the extension and this is the extension. When all of those would be filled in it would be a 10,000 barrel per day plant. As to how long it would take to make an adequate exploration and examination of the lime deposits that were on that estate, I should not think you could do it in under 6 months; it was not possible to do such a thing as that in 24 hours.

As to what actual work really was done on these premises I cleared 60 acres and grubbed about 40 acres. That 40 acres was where the plant was to be. I graded about a mile of land for the spur. For this spur track we cleared a place 100 feet wide, I think

(Testimony of Frederick Davis.)

it was, and cut the ties for the track and laid the track—5,000 feet of track, which was paid for to the Bellingham Bay road. We also established a camp of 15 or 20 tents with board floors and board sides. We had two eating-houses of rough lumber. Everything was of rough lumber. Each of these eating-houses would take care of about thirty men. We built an office 8x15 or 20, or 10x15—something of that kind—which was of rough lumber. We built a store-room of rough lumber which was about the same size as the office. We built a blacksmith-shop out of logs; this shop was about 20x40 or something of that kind. We built a carpenter-shop 25x40, of rough lumber also.

Q. Do you know of anything else that was done on those premises except what you have described?
[418—145]

A. We just started grading. I guess we worked about a week with the scraper grading for what we call the klinkler tunnels. That is what is shown in that picture that you exhibit to me, that is all the work that was done. At the time that I left there was no development work going on—nothing at all; the operations had ceased. All operations ceased on this 5,000 barrel per day plant in August or September, 1908.

Mr. OLNEY.—He is mistaken about that, Mr. Dunne; you had better straighten him out.

Mr. DUNNE.—Q. When did you get there, Mr. Davis?

A. I think I arrived in Bellingham on the first of

(Testimony of Frederick Davis.)

April, 1907.

Q. When did you leave New York?

A. I left New York in February, 1907. I kept a record of my expenditures there. The total amount of expenditures for all purposes made there was a trifle over \$41,000, of which \$22,000 was the pay-roll for labor and the balance was supplies.

Q. I will exhibit to you this letter, Mr. Davis, which is dated at Kendall, Washington, November 22, 1907, and ask you to look at it and to state if that does not assist you in fixing the time when all work ceased on the plant or property, rather, of the Northwestern Portland Cement Company.

A. Practically all work on the plant site was finished on this date.

Q. Which would be November 22, 1907.

A. Yes, sir, and then they held me there until September of the following year and during that year I did assessment work on the upper Reidle claims.

Q. But aside from doing that assessment work all development work on the plant proper ceased on November 22d, 1907? A. Yes, sir.

Mr. OLNEY.—Before the Court adjourns I have been looking [419—146] into the authorities involved in the objection to the question which I asked Mr. Evans as to whether or not he had at the time of the sale to the Standard formed any idea of the value of the assets of the Northwestern Portland Cement Company. I would refer your Honor to section 167 of Jones on evidence.

The MASTER.—I will rule on that matter at this time. I had intended to do so at the end of Mr. How-

ard's testimony. I have gone beyond the authorities which you quote, Mr. Olney, although they seem to be sufficient. I find that the opinion that I expressed, which was in accordance with Mr. Dunne's opinion, has support in only one jurisdiction, that of Alabama,—I am constrained to believe, therefore, that our views did not express the law. I have also considered the other points noted in the objections and the motions to strike out, that is to say, in the deposition of Mr. Evans as read on page 103 and following and in the proceeds here in Vol. 2 of the reporter's transcript, page 64; the ruling of that page and subsequent rulings were also reserved. The objection in each case will be overruled and the motion to strike out will be denied.

Mr. DUNNE.—To all of which we respectfully note an exception.

Mr. BROBECK.—Now, I understand that these rulings are made on the assumption that the order of reference is of such character in this case as to require your Honor to rule finally to the exclusion of testimony on the point as to whether testimony shall be received at all or not.

The MASTER.—They are made in connection with it. They are made on the points of law involved in the objections and motion to strike out. I have already indicated to you, Mr. Brobeck, by denying your motion to instruct the witness to answer that under the order of reference in this matter, the equity practice—which you expressed very well yesterday—will not be [420—147] followed at any stage. It is also made in view of the fact that under Mr.

Olney's stipulation the evidence embodied in Mr. Evans' answers which were the subject of the ruling were not offered or received for the purpose of determining the value of the assets of the Northwestern Portland Cement Company, but only as to his mental condition.

Mr. BROBECK.—If your Honor please, Mr. Olney and I have agreed as to the scope of the reference. I want to say in explanation of that matter, if your Honor please, that as the record appears in the Circuit Court, some years ago—I think we may say some years ago—the action of Evans vs. the Standard Portland Cement Company, Dingee and Bachman, was commenced. That was an action having for its purpose the enforcement, on the law side of the Circuit Court, the obligations which are claimed to have arisen as a result of the giving by the Standard Portland Cement Corporation these notes. That action pended for a number of months, and also, I may say, years. There was interposed to it practically the same equitable defenses which are interposed here now. On further investigation, however, it was discovered that on the law side of the Circuit Court an equitable defense could not be made available. That necessitated the institution of another action in which the Standard Portland Cement Corporation was plaintiff and, reversing the parties, makes Mr. Evans or his firm, defendants, and which has for its purpose, as your Honor is well aware, the procurement from the court of an order annulling the notes referred to and forever restraining the prosecution of the law action. Now, while the law action was pending, and

before the equitable action was commenced, an agreement was reached between counsel as the result of which we desired to refer the law action to your Honor for consideration and the taking of the testimony, and at that time [421—148] an order substantially in the form of the order which you now have before you was drawn. Thereafter the equity proceeding was commenced. When it came to the adoption of a form of reference the old form of order was adopted by both parties, although I think it may be candidly said that it was the purpose of neither party to deny your Honor the permission to receive all of the testimony and to permit the Circuit Court to review all of the testimony which might be offered, as is the practice in equity before your Honor under the general form of reference. Now, that being true, Mr. Olney and I have, I think I may say, agreed, that the proceeding here, so far as the equity action is concerned, may proceed as under a general form of reference, and while we invite and desire your Honor's rulings on the admissibility of testimony as we go along, we still desire that the entire testimony should be received into the record, as is the ordinary practice, and that it should be certified, as is the practice, for review by the Circuit Court when the time comes; and, if necessary to the accomplishment of that purpose, Mr. Olney representing the defendants in the equity action and the plaintiffs in the law action, is prepared to stipulate with counsel for the opposing parties that such shall be the rule of practice controlling the further hearing of this cause.

Mr. OLNEY.—I would say that I think your

Honor's ruling is perfectly correct, but counsel seem to think that it was not what they expected under the stipulation. The stipulation had been very amicably arranged between us, and inasmuch as they did not expect it under the stipulation, I did not fear that I could well afford to take advantage of it, particularly in view of the fact that I do not consider it makes very much difference. But the understanding of the stipulation now, or the arrangement that Mr. Brodbeck desires to make now—it is an arrangement that I am [422—148a] willing to make—is that whenever a piece of evidence is objected to and the objection is sustained, the evidence shall nevertheless be taken and subject to the objection shall appear in the transcript of the evidence in the manner that is usual in equity cases.

Mr. BROBECK.—Yes, that is right.

The MASTER.—That is to say, the particular clause of the order of reference which, of course, as you understand, is the chart of my authority in these matters, to which the stipulation is addressed is this: “That the trial of said causes before said Referee, and the taking and hearing of evidence therein be in the manner and subject to the rules of practice governing the trial in the above-entitled court of actions at law tried by the court without a jury.” In effect, the stipulation is that instead of the words “actions at law,” etc., you would substitute the words “suits in equity.”

Mr. OLNEY.—No, your Honor, I am not willing to go that far. The stipulation was made up in this way, neither Mr. Brobeck nor myself knew very

much about the equity practice and we designed to try this case practically as it would be tried in the State courts, with which practice we are somewhat acquainted. The stipulation was drawn up on that line. My intention is, if the Court please, to continue with that idea, with the single exception that when a question is asked or evidence is offered and objection is made to it and sustained, the testimony of the evidence may nevertheless be put in the record, so that the ruling can appear clear to the court above if it considers it relevant.

The MASTER.—I confess I do not understand the distinction that is drawn. Perhaps I had better explain my understanding of the equity practice in that matter. The parties must understand that the practice I speak of is not peculiar to the Master's office. It prevails, and properly prevails, in case the matter is tried before the [423—148b] Circuit Court in the infrequent cases where equity proceedings are so tried in open court. That practice is this: that to avoid the possibility of new trials a full record shall go up, and in the event of an objection being sustained an answer shall be taken. That is the general rule. The ruling is made and the Master directs the answer. There are, however, at least two exceptions to that which are more or less well defined: one is in case a question of privileges is involved, the other is where an objection is made and the matter is ruled on, and is, in the mind of the Master, obviously proper. In other words, it is quite possible that an objection will be sustained, and I would refuse to direct the witness to answer; neither does it

interfere with such rules of exclusion of evidence as may properly be said to be directed at the Court's control of the order of presentation; say, for example, it may be a question of not proper cross-examination. Other instances might be cited. There is some little latitude allowed there. I state that to you to show that even under the parties' stipulation I am not going to listen to anything that you want to put in that I do not think is proper. Naturally, of course, when reputable counsel offer a matter that they deem is material to the case, and of course they know more about the case than the Court does, it is not likely that it would be ruled out. Then, too, it may be a question of the proper course of the examination; it may be a matter that has already been gone into. But with those restrictions, and bearing in mind the fact that the rules of evidence in equity are the same as the rules of evidence in law, I do not see but that it amounts to just what I offered in the beginning.

MR. BROBECK.—I think that is true. I do not think there is any difference between us on that.

MR. OLNEY.—The only thing I was guarding against is this: the stipulation [424—148c] covers the whole procedure before your Honor—not merely the taking of evidence. If there was any difference in the general procedure between an equity case and the trial of a case that was merely an action at law, I don't want the stipulation to cover that.

THE MASTER.—I do not understand there are any. The Master simply directs the order of proof and determines the order of proof in such manner as

he desires. After all, that is simply the trial of a case at common law. When you come to the question of order of proof you may reopen on rebuttal, although you may not do it if the jury were present, and so on. Well, if that is the desire of the parties I presume that on the stipulation of the parties I may proceed outside the order of reference, and in any such matter as that I will direct the answer to be given.

Mr. OLNEY.—All is the stipulation that I desired to make.

The MASTER.—All right. With reference to the letter of Mr. C. W. Howard, which was excluded at a prior hearing, I understand from the informal discussion we have had that the exception to the exclusion of that letter is waived?

Mr. DUNNE.—Yes, your Honor.

Mr. OLNEY.—And also, there was a certain question asked Mr. Evans, when he was on the stand, as to how many times he had visited Kendall. That question was objected to and the objection was sustained, and an exception noted.

Mr. BROBECK.—Oh, well, that amply appeared from Mr. Howard's testimony that he was up there twice.

Mr. DUNNE.—I think it appeared by his own testimony in the deposition that he was up there twice.

Mr. OLNEY.—Well, if you have the idea that he specified or stated that he was there twice, you are wholly mistaken; that is not the fact. [425—148d]

Mr. DUNNE.—That is my understanding. Well, how frequently was he there?

(Testimony of Ernest E. Evans.)

Mr. OLNEY.—Ask him.

Mr. DUNNE.—Q. How often were you there, Mr. Evans?

Mr. EVANS.—I have been there seven or eight times.

Mr. BROBECK.—Q. You mean to the property at Kendall?

Mr. EVANS.—Yes; on this particular property three times. Of course I was up there first in 1899, when we first took up the Balfour property.

Mr. DUNNE.—Q. That was the property on the other side of the valley?

A. Yes. I was up there four times on that property, and three times on this.

Mr. DUNNE.—Well, that is sufficient.

**[Testimony of Ernest E. Evans, for Complainant
(Recalled).]**

The WITNESS.—(Continuing.) As one leaves the flat, so to speak where the projected plant was to be placed and goes up the hill toward the Reidle claims, one must go up that hill about 600 feet before he meets the first of these lime deposits,—that is, 600 feet above the lake, and the flat is about 2 or 3 feet above the lake. I had machinery and tools on the premises—a donkey-engine, scrapers, picks and shovels, engineer's instruments, wheel-barrows and things of that nature, and blacksmith supplies. The scrapers were wheel-scrapers for grading, they used teams in grading the land. Those materials and tools were all shipped to the Santa Cruz Portland

(Testimony of Ernest E. Evans.)

Cement Company at the direction of Mr. Dingee—everything that was left on the job was shipped down, in Aug., 1908. I left there in the last part of August or in Sept., as soon as I shipped all that stuff I left. This waybill of the Bellingham Bay and British Columbia Ry. shows that this carload of material, one carload of lumber was shipped down on August 25, 1908, to Santa Cruz. This next way-bill on the same railroad line shows that these sawed railroad ties were shipped through on August 15, 1908. This carload of lumber on the next way-bill was shipped on August 15th, 1908; this next way-bill shows a carload of lumber shipped there on August 18, 1908, and the next shows another carload of lumber on August 25, 1908, and the next shows another carload of lumber August 17, 1908. The next way-bill shows that on August 8th [426—148e] 1908, a carload of contractor's tools, carts and pipe, etc., was shipped there; it was a box-car containing small tools and a hoisting engine and other machinery, including a No. 5 Gates crusher—twenty-four pieces in all.

Cross-examination.

I did not prepare the plans for this plant at Kendall. No buildings were put up, you know. I staked them out on the ground. I did not determine where those buildings were to be,—that was marked on the plan, and all I had to do was to go there and make a survey, but I shifted the axis of the building a little bit. I was given complete plans at the outset to follow, and all I had to do there was to follow those plans with such slight modifications as might suggest

(Testimony of Ernest E. Evans.)

themselves to me from time to time, and any change I would make I would report before carrying it out. I have been all over these limestone deposits and examined them with a view of ascertaining how much limestone there was there only from a superficial view of it from the outcroppings of the ground. I did not see them casually—I studied them continuously with the idea of finding a location for the opening of the quarry. I have the dip of the limestone strata there somewhere in my record. I have forgotten it now. It came in dips just about like that. These white marks in Complainant's Exhibit 9 which appears in the upper right-hand corner are, I think, our first outcropping, the first place that was cleared. That place is clear—it was slashed in there. It was cleared right around the limestone there to develop it to see what was there. I cannot remember whether what you indicate was slashed—that was not on our property. I know there has been some slashing done there—that is what makes the limestone show up so you can see it. I think the top of the limestone was 1200 feet to the top of the hill; you could trace it up, the outcroppings, for 600 feet. I think the dip was about 30 degrees, as I remember, [427—149] into the hill; it dipped this way. I could not say as to the strike of the strata. I do not think it was level. It is very hard to determine that there because it was so covered with brush. But I did have a continuous outcropping of limestone in patches from a point about 600 feet to a point 1200 feet. These outcroppings had not been dislodged; they were simply there

(Testimony of Ernest E. Evans.)

as great masses of country rock. No, it was not perfectly apparent to me going there and looking at this limestone and at these outcroppings extending about 600 feet up and down the hill that there were vast masses of limestone in that region. Before I would want to spend any money there, I would want to develop it, and see what was in it. It looked as if there were large bodies of limestone rock there but you could not tell what was under it. The Balfour-Guthrie property was on the other side of the railroad just across the valley—at the foot of the valley; they were on one side and we were on the other. The railroad ran right up the center of the valley. While I was there I did consider the question as to whether the Balfour-Guthrie limestone deposits were a continuation of the same formation that was found on this property; they probably were in the valley. Of course, the overburden was so great that you could not mine it there. The limestone deposits on the property of the Northwestern Portland Cement Company took the same general direction toward the Balfour-Guthrie property; that is all you can see of it. That was my judgment at the time, but there was no limestone between the two—that was the general indication of the limestone running through the country. You could trace it further up than that.

Redirect Examination.

When I spoke of this exhibition of limestone for 600 feet up, I meant that this 600 feet was in patches; it was not continuous. [428—150]

(Testimony of Ernest E. Evans.)

Recross-examination.

I thought that the limestone formation was practically continuous from 600 feet up to 1200 feet; but I made no investigation to determine scientifically the existence of that fact—not between these places; it is reasonable to suppose it would be there. That 600 feet was the lowest place that we could start operations for mining.

Mr. DUNNE.—We offer in evidence the articles of incorporation of the Standard Portland Cement Company filed in the office of the Secretary of State on January 27th, 1902; also the articles of incorporation of the Santa Cruz Portland Cement Company filed in the office of the Secretary of State on the 2d day of June, 1905; also certificate as to the creation of the bond indebtedness of the Santa Cruz Portland Cement Company filed in the office of the Secretary of State September 1, 1905; and also articles of incorporation of the Puget Sound Portland Cement Co. dated July 13th, 1906, and filed in the office of the County Clerk of the City and County of San Francisco on the 14th of July, 1906; and also the articles of incorporation of the Northwestern Portland Cement Company dated August 23, 1906, and filed in the office of the County Clerk of the City and County of San Francisco on the 23d of August, 1906; and also the certificate of creation of the bond indebtedness of the Northwestern Portland Cement Company dated November 3d, 1906, and filed in the office of the County Clerk of the City and County

of San Francisco, on November 5th, 1906; and also the articles of incorporation of the Standard Portland Cement Corporation dated February 23, 1907, and filed in the office of the County Clerk of the City and County of San Francisco on February 23, 1907. Each and all of said documents so offered were received and read in evidence in said cause and are in words and figures as follows, to wit: [429—151]

“ARTICLES OF INCORPORATION OF THE
STANDARD PORTLAND CEMENT COM-
PANY.

No. 6293.

C. F. Curry, Secretary of State. J. Hoesch, Deputy.

STATE OF CALIFORNIA.

DEPARTMENT OF STATE.

I, C. F. CURRY, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Incorporation of STANDARD PORTLAND CEMENT COMPANY with the certified copy of the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole therefrom, and of the whole thereof. ALSO that this authentication is in due form and by the proper officer.

WITNESS my hand and the Great Seal of State at office in Sacramento, California, the 12th day of November, A. D. 1906.

(Great Seal)

C. F. CURRY,
Secretary of State.

By J. Hoesch,
Deputy.” [430—151a]

“ARTICLES OF INCORPORATION

of the

STANDARD PORTLAND CEMENT COMPANY.

KNOW ALL MEN BY THESE PRESENTS:
That we, the undersigned, all of whom are citizens and residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California,

AND WE DO HEREBY CERTIFY,

FIRST: That the name of said corporation shall be

STANDARD PORTLAND CEMENT COMPANY.

SECOND: That the purposes for which it is formed are: To acquire, own, hold and lease real property within the State of California, and elsewhere. To operate quarries: To manufacture, sell, purchase and deal in cement of all kinds: To construct, own, operate and acquire works for the manufacture of cement: To own, purchase and acquire water and water rights, and to construct, maintain and operate aqueducts, reservoirs and ditches necessary or useful in utilizing the same: To buy, sell, own and deal in shares of stock, bonds and obligations of other corporations: To charter, construct, own, hold and acquire wharves and warehouses for use in connection therewith: To acquire, own and hold patent rights and licenses: To borrow and lend money: And generally, to do and perform all other things

necessary or incidental to any of the purposes hereinabove set forth.

THIRD: That the place where the principal business of the corporation is to be transacted is the City and County of San Francisco, State of California.

FOURTH: That the term for which said corporation is to exist is fifty (50) years from and after the date of its incorporation.

FIFTH: That the number of Directors or Trustees of the corporation shall be five (5) and that the names and residences of Directors or Trustees who are appointed for the first year and to serve until the election and qualification of such officers, are as follows, to wit:

Names:	Residences:
William J. Dingee,	San Francisco, California.
F. W. Henshaw,	Oakland, California.
W. G. Henshaw,	Oakland, California.
Edward J. McCutchen,	San Francisco, California.
Frank C. Havens.	Oakland, California.

SIXTH: That the amount of the capital stock of the corporation is two million (2,000,000) dollars, divided into twenty thousand (20,000) shares of the par value of one hundred (100) dollars each/

SEVENTH: That the Amount of said capital stock which has been actually subscribed is two thousand five hundred (2,500) dollars, and the following are the names of the persons by whom the same has been subscribed, to wit: [431—151b]

604 *Standard Portland Cement Corporation*

Names of Subscribers.	Number of Shares.	Amount.
William J. Dingee	Five	\$500.—
F. W. Henshaw	Five	500.—
W. G. Henshaw	Five	500.—
Edward J. McCutchen	Five	500.—
Frank C. Havens	Five	500.—

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 24th day of January, A. D. 1902.

WILLIAM J. DINGEE. (Seal)
 F. W. HENSHAW. (Seal)
 WM. G. HENSHAW. (Seal)
 EDW'D J. McCUTCHEN. (Seal)
 F. C. HAVENS. (Seal)

State of California,
 City and County of San Francisco,—ss.

On this 24th day of January, in the year nineteen hundred and two, before me, Frank L. Owen, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared William J. Dingee, F. W. Henshaw, W. G. Henshaw, Edward J. McCutchen and Frank C. Havens, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Seal) FRANK L. OWEN,
 Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco,—ss.

I, Albert B. Mahony, County Clerk of the City and County of San Francisco, State of California, hereby certify the foregoing to be a full, true and correct copy of the original Articles of Incorporation of the STANDARD PORTLAND CEMENT COMPANY, filed in my office on the 25th day of January, A. D. 1902.

ATTEST my hand and my official seal this 25th day of January, A. D. 1902.

(Seal)

ALBERT B. MAHONY,

County Clerk.

By Joseph Riordan,

Deputy Clerk.

Endorsed: Filed in the office of the County Clerk of the city and county of San Francisco, State of California, this 25th day of January, A. D. 1902. Albert B. Mahony, County Clerk. By Joseph Riordan, Deputy Clerk."

(Endorsed on Back:) "34722. Articles of Incorporation of the Standard [432—151c] Portland Cement Company. Certified Copy. (Endorsed:) Filed in the office of the Secretary of State, the 27th day of Jan., A. D. 1902. F. C. Curry, Secretary of State. By J. Hoesch, Deputy. Record book 133. Page 224. Department of State, California."

“ARTICLES OF INCORPORATION OF THE
SANTA CRUZ PORTLAND CEMENT COM-
PANY.

No. 6289.

C. F. Curry, Secretary of State. J. Hoesch, Deputy.

STATE OF CALIFORNIA.

DEPARTMENT OF STATE.

I, C. F. CURRY, Secretary of *the* State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Incorporation of SANTA CRUZ PORTLAND CEMENT COMPANY, with the certified copy of the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also that this authentication is in due form and by the proper officer.

WITNESS my hand and the Great Seal of State, at office in Sacramento, California, the 12th day of November, A. D. 1906.

(Great Seal)

C. F. CURRY,
Secretary of State.
By J. Hoesch,
Deputy.”

“ARTICLES OF INCORPORATION OF THE
SANTA CRUZ PORTLAND CEMENT COM-
PANY.

KNOW ALL MEN BY THESE PRESENTS;
That we, the undersigned, a majority of whom are citizens and residents of the State of California, have

this day voluntarily associated ourselves together for the purpose of forming a corporation, under the laws of the State of California.

AND WE HEREBY CERTIFY:

FIRST: That the name of said corporation shall be

SANTA CRUZ PORTLAND CEMENT COMPANY.

SECOND: That the purposes for which it is formed are to manufacture, buy, sell and deal in cement, and the products thereof; to build, construct, hire, lease, buy, maintain and operate works for manufacturing cement, and the products thereof; to acquire, buy, sell, hold, own, mortgage, hypothecate, lease, let, exchange, and improve, in the modes and ways permitted by law, all kinds of real and personal property, including easements, water, water [433—151d] rights, and all kinds of rights and franchises; to operate quarries, mines, ditches, pipe lines, flumes, chutes, reservoirs, waterworks and electric plants, and to generate, transport, transmit and sell water, water power and electric power; to charter, build, construct, own, lease, hire and operate steam, sailing and other vessels, and wharves, piers and warehouses; to buy, sell, take, lease, or otherwise acquire and own inventions and patents, and all kinds of interests therein; to buy, sell, acquire, own and hold stocks, bonds, debentures and evidences of debt of itself and other corporations and persons; to borrow and loan money, and to convey in trust or by way or mortgage or pledge, any of its property, rights and

franchises, including stocks and bonds issued by it for the purpose of securing any indebtedness which it may *tract*; and generally to make all kinds of contracts, and do and perform all other things necessary or incidental to any of the purposes hereinabove set forth.

THIRD: That the place where the principal business of said corporation is to be transacted is the City and County of San Francisco, State of California.

FOURTH: That the term for which said corporation is to exist is fifty (50) years, from and after the date of its incorporation.

FIFTH: That the number of Directors of said corporation shall be five, and that the names and residences of the Directors who are appointed for the first year, and to serve until the election and qualification of such officers, are as follows, to wit:

Names:	Whose Residence is at
W. C. Webb	San Francisco, California.
Edwin Schwab	San Francisco, California.
W. B. Downing	San Francisco, California.
W. N. Hohfield	San Francisco, California.
A. F. Morrison	San Francisco, California.

SIXTH: That the amount of the Capital Stock of said corporation is five million (5,000,000) dollars, and the number of shares into which it is divided is fifty thousand (50,000) shares of the par value of one hundred (100) dollars each.

SEVENTH: That the amount of said Capital Stock which has been actually subscribed is five hundred (500) dollars, and the following are the names

of the persons by whom the same has been subscribed, to wit:

Name of Subscribers.	No. of Shares.	Amount.
W. C. Webb	One	\$100.00
Edwin Schwab	One	\$100.00
W. B. Downing	One	\$100.00
W. N. Hofeld	One	\$100.00
A. F. Morrison	One	\$100.00

IN WITNESS WHEREOF, we have hereunto set our hands and *sales* this 31st day of May 1905.

W. C. WEBB. (Seal)

EDWIN SCHWAB. (Seal)

W. S. DOWNING. (Seal)

W. N. HOHFELD. (Seal)

A. F. MORRISON. (Seal)

Signed and sealed in the presence of

JAMES MASON. [434—151e]

State of California,

City and County of San Francisco,—ss.

On this 31st day of May, in the year A. D. 1905, before me, James Mason, a Notary Public in and for said City and County duly commissioned and sworn, personally appeared W. C. Webb, Edwin Schwab, W. S. Downing, W. N. Hohfeld, and A. F. Morrison, known to me to be the persons whose names are subscribed to, and who executed the within instrument, and acknowledged that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

(Seal)

JAMES MASON,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,

City and County of San Francisco,—ss.

I, John J. Greif, County Clerk of the City and County of San Francisco, State of California, hereby certify the foregoing to be a full, true and correct copy of the original Articles of Incorporation of SANTA CRUZ PORTLAND CEMENT COMPANY filed in my office on the 1st day of June, A. D. 1905.

ATTEST my hand and my official seal this 1st day of June, A. D. 1905.

(Seal)

JOHN J. GREIF,

County Clerk.

By A. Houston,

Deputy County Clerk.

Filed in the office of the County Clerk of the City and County of San Francisco, State of California, this 1st day of June, A. D. 1905.

JOHN J. GREIF,

County Clerk.

By A. Houston,

Deputy County Clerk.”

(Endorsed on Back): “43059. Articles of Incorporation of the Santa Cruz Portland Cement Company. Certified Copy. (Endorsed.) Filed in the Office of the Secretary of State the 2nd day of June, A. D. 1905. C. F. Curry, Secretary of State. By J. Hoesch, Deputy. Record Book 167. Page 295. Department of State, California.”

“CERTIFICATE AS TO CREATION OF
BONDED INDEBTEDNESS OF SANTA
CRUZ PORTLAND CEMENT COMPANY.

STATE OF CALIFORNIA.

DEPARTMENT OF STATE.

I, C. F. Curry, Secretary of State of the State of California, do [435—151f] hereby certify that I have carefully compared the annexed copy of Creation of Bonded indebtedness of Santa Cruz Portland Cement Company with the certified copy of original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the 12th day of Nov., A. D. 1906.

(Great Seal)

C. F. CURRY,
Secretary of State.
By J. Hoesch,
Deputy.”

“CERTIFICATE

as to

CREATION OF BONDED INDEBTEDNESS

of

SANTA CRUZ PORTLAND CEMENT COM-
PANY.

State of California,

City and County of San Francisco,—ss.

WE, William J. Dingee, President of Santa Cruz

Portland Cement Company, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of California, and Frank A. Losh, Secretary of said corporation, and we, the undersigned, William J. Dingee, Frank A. Losh, W. C. Webb, and A. F. Morrison, being a majority of the directors of said Santa Cruz Portland Cement Company, do hereby certify and declare as follows:

That Santa Cruz Portland Cement Company is, and was during all the times hereinafter mentioned, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business at the City and County of San Francisco, State of California, as by its Articles of Incorporation duly filed in the office of the County Clerk of the said City and County of San Francisco, and in the office of the Secretary of State of the State of California, will more fully appear:

That the amount of the capital stock of the said corporation authorized by its Articles of Incorporation, is five million (5,000,000) dollars, and that the number of shares into which said capital stock is divided is fifty thousand (50,000) shares, of the par value of one hundred (100) dollars each: that all of said fifty thousand (50,000) shares have been subscribed for, and are and were at all times herein mentioned, issued and outstanding: that the number of Directors of said corporation as provided in its articles of Incorporation is five (5) and that the names of the persons who are, and were at all the times

herein mentioned, the Directors of said corporation, are as follows, namely: William J. Dingee, Irving A. Bachman, Frank A. Losh, W. C. Webb, and A. F. Morrison:

That at a meeting of the Board of Directors of said Santa Cruz Portland Cement Company, duly called, noticed and held at the office of the Company, on the 27th day of June, 1905, at which [436—151g] meeting of said Board all the members thereof were present and concurred therein, the following resolution was adopted by the unanimous vote of all the Directors of said corporation, viz.:

WHEREAS: the Board of Directors of Santa Cruz Portland Cement Company, a corporation, created, organized and existing under the laws of the State of California, deem it expedient to create a bonded indebtedness of the corporation to the amount of two million (2,000,000) dollars, in United States Gold Coin, for the purpose of providing moneys to purchase property, to build and equip a cement manufacturing plant suitable for the business of the corporation, and for legitimate and necessary purposes, which bonded indebtedness shall be secured by a mortgage or deed of trust covering all of the property, both real and personal, now owned by the corporation and which it may hereafter acquired.

NOW, THEREFORE, BE IT RESOLVED, that a meeting of the stockholders of this corporation, Santa Cruz Portland Cement Company be, and the same is, hereby called, and will be held at the office of the corporation, at Room Number 30 of the Crocker Building, at the Southwest corner of Post,

Montgomery and Market Streets, in the City and County of San Francisco, State of California (that being the office and principal place of business of the corporation, and the building where the Board of Directors usually meet) on Thursday the 31st day of August, 1905, at the hour of 10 o'clock A. M. for the purpose of considering and acting upon a proposition to create a bonded indebtedness of the corporation, to the amount of two million (2,000,000) dollars, United States Gold Coin, to the end and for the purpose of providing moneys to purchase property, to build and equip a cement manufacturing plant suitable for the business of the corporation, and for legitimate and necessary purposes: which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property, both real and personal, now owned by the corporation and which it may hereafter acquire:

And that the Secretary of the corporation cause a notice of said meeting to be given by publication in the Bulletin, a newspaper of general circulation, printed and published in the City and County of San Francisco, State of California, once a week for at least sixty (60) days prior to the 31st day of August, 1905, which notice shall specify the object of the meeting the time and place of holding the meeting, and shall state the amount of the bonded indebtedness which it is proposed to create, and shall be substantially in the following form:

NOTICE OF STOCKHOLDERS' MEETING
OF SANTA CRUZ PORTLAND CEMENT
COMPANY TO CONSIDER PROPOSITION
TO CREATE A BONDED INDEBT-
EDNESS.

NOTICE TO THE STOCKHOLDERS of Santa Cruz Portland Cement Company is hereby given, that in pursuance of a resolution of the Board of Directors said corporation, unanimously adopted at a meeting of said Board, held at the office of the corporation, in the City and County of San Francisco, State of California, on the 27th day of June, 1905, a special meeting of the stockholders of said Santa [437—151h] Cruz Portland Cement Company will be held at the office of the corporation, Room No. 30, of the Crocker Building, at the southwest corner of Post, Montgomery and Market Streets, in the City and County of San Francisco, State of California (the same being the principal place of business of said corporation), and the building where the Board of Directors usually meet, on Thursday, the 31st day of August, 1905, at the hour of 10 o'clock A. M. for the purpose of considering and acting upon a proposition to create a bonded indebtedness of said corporation, to the amount of two million (2,000,000) Dollars, in United States Gold Coin, to the end and for the purpose of providing moneys to purchase property, to build and equip a cement manufacturing plant suitable for the business of the corporation, and for legitimate and neces-

sary purposes: which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property, both real and personal, now owned by the corporation, and which it may hereafter acquire.

By order of the Board of Directors.

.....,

Secretary of Santa Cruz Portland Cement Company.

and **FURTHER RESOLVED:** that in addition to such notice by publication, the Secretary of this corporation shall address a like notice to each of the stockholders of this corporation, whose names appear on the corporation's books as sufficiently addressed or identified at his place of business, if known, and if not known, then at the place in which the principal place of business of the corporation is situate, which notice shall be mailed to such stockholder at least thirty (30) days prior to the day appointed for such meeting.

And we further certify that the by laws of Santa Cruz Portland Cement Company do not prescribe, and never have prescribed, the newspaper in which notices of meetings of its stockholders or Directors are to be published:

And we do further certify that in pursuance of the foregoing resolution, the said Frank A. Losh, the Secretary of said Corporation caused to be published in "The Bulletin," which is, and was, at all times herein mentioned, a newspaper of general circulation, printed and published daily in said City and

County of San Francisco, State of California, a notice whereof the following is a copy:

NOTICE OF STOCKHOLDERS' MEETING
OF SANTA CRUZ PORTLAND CEMENT
COMPANY TO CONSIDER PROPOSITION
TO CREATE A BONDED INDEBT-
EDNESS.

Notice to the stockholders of Santa Cruz Portland Cement Company is hereby given, that in pursuance of a resolution of the Board of Directors of said corporation, unanimously adopted at a meeting of said Board, held at the office of the corporation, in the City and County of San Francisco, State of California, on the 27th day of June, 1905, a special meeting of the stockholders of said Santa Cruz Portland Cement Company will be held at the office of the corporation, Room No. 30 of the Crocker Building, at the southwest corner of Post, Montgomery and Market Streets, in the City and County of San Francisco, State of California (the same being the principal place of business of said corporation, and the building where the [438—
[151i] Board of Directors usually meet), on Thursday, the 31st day of August, 1905, at the hour of 10 o'clock a. m. for the purpose of considering and acting upon a proposition to create a bonded indebtedness of said corporation, to the amount of two million (2,000,000) dollars, in United States gold coin, to the end and for the purpose of provided moneys to purchase

property, to build and equip a cement manufacturing plant suitable for the business of the corporation, and for legitimate and necessary purposes: which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property, both real and personal, now owned by the corporation, and which it may hereafter acquire.

By order of the Board of Directors.

FRANK A. LOSH,

Secretary of Santa Cruz Portland Cement Company.

je28 til aug.30 inc.

That said publication of said notice was commenced on Wednesday, June 28th, 1905, and the same was published in the regular issue of said newspaper on the following days, to wit: June 28th, 1905, July 5th, 1905, July 12th, 1905, July 19th, 1905, July 26th, 1905, August 2nd, 1905, and August 9th, 1905, August 16th, 1905, August 23rd, 1905, and August 30th, 1905, being once a week for at least sixty (60) days prior to Thursday, the 31st day of August, 1905, the day fixed for said stockholders' meeting, and that the affidavit of the publication of said notice, marked Exhibit 'A' is hereto attached and made a part hereof:

And we do further certify that on the 31st day of July, 1905, a true copy of said notice was by the Secretary of said corporation, addressed and mailed to each of the stockholders of said corporation whose names appeared upon the books of said corporation as sufficiently dressed, or identified, at his place of residence, and to every stockholder of the cor-

poration whose name appeared upon the books of the corporation from and including the said 27th day of June, 1905, to and including the 31st day of July, 1905, at his place of residence. Said notices were mailed to said stockholders by depositing the same in the United States Postoffice in the City and County of San Francisco, State of California, with the postage thereon fully prepaid, one of said notices being addressed to each of said stockholders at his place of residence: that at the time said notices were so addressed and mailed to such stockholder, the name of each stockholder of the corporation appeared on the books of the corporation sufficiently addressed, and identified and the residence of each stockholder was known to said Secretary, and that the affidavit of Frank A. Losh, the Secretary of said corporation, marked Exhibit 'B,' showing such mailing of said notices, is hereto attached and made a part hereof:

And we do further certify and declare that in pursuance of said resolution and notice, and on the day appointed therein to wit, on the 31st day of August, 1905, at the hour of 10 o'clock a. m. of that day, at the office of the said corporation, at Room No. 30, of the Crocker Building, at the southwest corner of Post, Montgomery and Market Streets, in the City and County of San Francisco, State of California (the same being the principal place of business of said corporation, and being the building where the board of Directors usually meet,) said meeting of the stockholders of said Santa Cruz Portland Cement Company duly took place and was held: that the said

meeting was called to order by William J. Dingee, the [439—151j] President of said corporation, who acted as such chairman of said meeting: and said Frank A. Losh, the secretary of said corporation, acted as such Secretary of said meeting:

And we further certify and declare that at said stockholders' meeting there were present in person and represented by proxy in writing; stockholders of said corporation holding and representing upon the books of the Company, fifty thousand (50,000) shares of the subscribed and issued capital stock thereof. The same being all of the subscribed and issued capital stock of the corporation:

And we do further certify and declare that the following proceedings of said meeting of stockholders were then taken and had:

The President stated that the meeting had been called by the Board of Directors of the corporation for the purpose of considering and acting upon a proposition to create a bonded indebtedness of said corporation to the amount of two million (2,000,000) dollars, in United States gold coin, to the end and for the purpose of providing moneys to purchase property, to build and equip a cement manufacturing plant suitable for the business of the corporation, and for legitimate and necessary purposes, which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property, both real and personal, now owned by the corporation, and which it may hereafter acquire.

The Secretary thereupon read the resolution of the Board of Directors adopted at the meeting of the

Board held on June 27th 1905, calling such meeting of the stockholders, which resolution is hereinbefore set forth.

It having been shown that the publication and service of the notice of the meeting had been made in the manner and in all respects as required by law, the stockholders thereupon proceeded to consider said proposition, and after discussing and considering the same Mr. A. F. Morrison, a stockholder of the corporation, offered the following resolution and moved their adoption, namely:

WHEREAS, heretofore, to wit: on the 27th day of June, A. D. 1905, the Board of Directors of Santa Cruz Portland Cement Company, a corporation, by a resolution duly passed and adopted, by the unanimous vote of the board, all of the Directors being present, ordered and called a meeting of the stockholders of the corporation to be held on this 31st day of August, A. D. 1905, at the hour of 10 o'clock A. M. of this day, at the office of the corporation, at Room No. 30, of the Crocker Building, at the southwest corner of Post, Montgomery and Market Streets, in the City and County of San Francisco, State of California (that being the principal place of business and the office of the corporation, and the building where the Board of Directors usually meet), for the object and purpose of then and there considering and acting upon a proposition to create a bonded indebtedness of the corporation to the amount of two million (2,000,000) dollars, in United States gold coin, to the end and for the purpose of providing moneys to purchase property, to build and equip a cement

manufacturing, plant suitable for the business of the corporation, and for legitimate and necessary purposes; and [440—151k]

WHEREAS, in pursuance thereof, a notice of the time and place of said meeting, specifying the object of said meeting and the amount of the bonded indebtedness which it is proposed to create, has been published in "The Bulletin" a newspaper printed and published in the City and County of San Francisco, State of California, and designated therefor in said resolution of the Board of Directors ordering and calling said meeting, once a week for at least sixty (60) days prior to the date of said meeting, and, in addition to said notice by publication, the Secretary of the corporation did address a like notice to each of the stockholders of the corporation at his place of residence which notices, so addressed, were mailed, in the United States Post Office, at San Francisco, California, with the United States postage, thereon fully prepaid, to each of the stockholders of the corporation, more than thirty (30) days before the day appointed for such meetings, all of which is now shown to have been done as required by law and the said resolution of the Board of Directors, and

WHEREAS, there are here present, at this meeting, in person and represented by proxy in writing, stockholders of this corporation, owning more than two-third ($\frac{2}{3}$) of the subscribed and issued capital stock of the corporation; and

WHEREAS, by reason of the facts herein recited and by virtue of law this meeting of stockholders is qualified by a vote of stockholders representing at

least two-thirds ($2/3$) of the subscribed and issued capital stock of the corporation, to create a bonded indebtedness to the amount mentioned in said resolution of the Board of Directors and said notices:

NOW, THEREFORE, BE IT RESOLVED: That a bonded indebtedness of said Santa Cruz Portland Cement Company, to the amount of two million (2,000,000) dollars, in United States gold coin, be, and the same is, hereby authorized and created, for the purpose of providing moneys to purchase property, to build and equip a cement manufacturing plant suitable for the business of the corporation, and for legitimate and necessary purposes:

AND BE IT FURTHER RESOLVED: That the bonded indebtedness hereby authorized and created shall be represented by two thousand (2,000) bonds of this corporation, of the denomination of one thousand (1,000) dollars each; and that said bonds shall bear interest at a rate not exceeding nine (9) per cent per annum, from date until paid, which interest shall be payable in such installments and at such times as the Board of Directors may determine; and said bonds shall have appropriate coupons attached for each interest payment; and that both the principal and interest of said bonds shall be payable in United States gold coin of the present standard of weight and fineness, and that said bonds shall bear date September first, 1905, and be payable, by their terms, on the first day of September in the year 1945, except that this corporation shall reserve the right, at its option, to call in and redeem any of said bonds, on the first day of September, 1910, or on the first

day of any March, or the first day or any September, thereafter, upon the payment of the par value thereof, with a premium of ten (10) per cent on such par value, and the interest due thereon at the date fixed for redemption:

AND BE IT FURTHER RESOLVED: That the Board of Directors for the purpose of securing the payment of said bonds, and the interest thereon, be, and it is, hereby authorized, empowered and directed to [441—151] prepare, execute, acknowledge and deliver, or to cause to be prepared, executed, acknowledged, and delivered in the name and under the seal of this corporation, to the Mercantile Trust Company of San Francisco, as trustee, a mortgage or deed of trust covering all of the property, both real and personal, now owned by the corporation and all which it may hereafter acquire, and that such mortgage or deed of trust and said bonds and coupons be made in such form and contain such provisions, terms and conditions, in all respects, as the Board of Directors may deem necessary proper or expedient in the premises, or may authorize to be executed.

AND BE IT FURTHER RESOLVED: That the said bonds and the whole thereof, be sold and disposed of by and under the direction of the Board of Trustees, in such lots and parcels, and in such manner, and upon such terms as to the Board shall seem proper.

AND BE IT FURTHER RESOLVED: That the Board of Directors be, and it is hereby expressly authorized, empowered, and directed to do and perform each and every act, deed and thing whatsoever,

which to the said Board of Directors shall seem requisite or necessary, or proper, to fully carry out the objects and intent of these resolutions, and to fully accomplish the purposes and objects for which said bonded indebtedness has been created and authorized.

The motion to adopt said resolutions was seconded by Mr. Frank A. Losh, a stockholder of the corporation. The President put the question on the adoption of the resolution, and the stockholders then proceeded to vote, upon a call of the roll, by 'ayes' and 'nay', upon said motion to adopt the resolutions and the following-named stockholders owning and holding respectively the number of shares of the subscribed capital stock of said corporation, set opposite their several and respective names, voted in favor of the adoption of said resolutions, that is to say:

Irving A. Bachman, by William J. Dingee.....	27,495 shares.
William J. Dingee.....	1 share.
Frank A. Losh.....	1 share.
Frank A. Losh, Trustee.....	22,500 shares.
A. F. Morrison.....	1 share.
W. C. Webb.....	1 “

Total.....50,000 shares.

said vote being the unanimous vote in favor of the adoption of said resolutions by all of the stockholders of the corporation.

Whereupon the President declared that the motion to adopt said resolutions had been unanimously carried, and that said resolutions had been passed,

and adopted by the vote of all stockholders, present at said meeting, namely by stockholders representing, 50,000 shares of the subscribed and issued capital stock of the corporation, being the entire capital stock; all of which appears of record in the minutes of said meeting of the stockholders thereof, as recorded and preserved in its record book. [442—151m]

And we do further certify and declare that by the proceedings aforesaid, a bonded indebtedness of the Santa Cruz Portland Cement Company has been created, and authorized to be created, in the amount in the aggregate of two million (2,000,000) dollars, in United States gold coin, that the amount of stock represented at said stockholders' meeting was 50,000 shares of the par value of one hundred (100) dollars per share, aggregating five million (5,000,000) dollars of par value; that the vote by which said bonded indebtedness was created, accomplished and authorized, was a vote in favor thereof by stockholders representing 50,000 shares of the subscribed and issued capital stock of the corporation; that there were no votes in the negative; and that the creation of said bonded indebtedness was accomplished by votes of stockholders representing 50,000 shares of the subscribed and issued capital stock of said corporation which is more than two thirds of *then* subscribed capital stock of the corporation; and that all of the requirements of the Civil Code of the State of California have been complied with, by Santa Cruz Portland Cement Company.

IN WITNESS WHEREOF, we have hereunto set

our hands and caused the corporate seal of said corporation to be hereunto affixed this 31st day of August, 1905.

WILLIAM J. DINGEE,
President of Santa Cruz Portland Cement Company,
a Corporation.

FRANK A. LOSH,
Secretary of Santa Cruz Portland Cement Company,
a Corporation.

WILLIAM J. DINGEE,
Director of said Santa Cruz Portland Cement Com-
pany.

FRANK A. LOSH,
Director of said Santa Cruz Portland Cement Com-
pany.

W. C. WEBB,
Director of said Santa Cruz Portland Cement Com-
pany.

A. F. MORRISON,
Director of said Santa Cruz Portland Cement Com-
pany.

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO,—ss.

On this 31st day of August, 1905, before me, Adeline Copeland, a Notary Public in and for said City and County of San Francisco, State of California, duly commissioned and sworn, personally appeared William J. Dingee, known to me to be the President of the Santa Cruz Portland Cement Company, the corporation described in the within and annexed instrument, and the Chairman of the meeting of stockholders of said corporation whose name is subscribed

to said instrument as such President; and Frank A. Losh, known to me to be the Secretary of said Santa Cruz Portland Cement Company, and the Secretary of said meeting of said stockholders, of said company whose name is subscribed to the said instrument as [443—151n] such Secretary and they severally acknowledged to me that they executed said instrument as such President and Secretary respectively of said corporation; and on the same day personally appeared before me William J. Dingee, Frank A. Losh, W. C. Webb and A. F. Morrision, known to me to be the Directors of said Santa Cruz Portland Cement Company whose names are subscribed to said instrument as such Directors, and they severally acknowledged that they executed said within and annexed instrument, as Directors of said Santa Cruz Portland Cement Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

[Seal] ADELINE COPELAND,
Notary Public in and for the City and County of
San Francisco, State of California.

State of California,
City and County of San Francisco,—ss.

William J. Dingee and Frank A. Losh, being each duly sworn each for himself, deposes and says: that said William J. Dingee is and was at all times mentioned in the foregoing certificate as to creation of bonded indebtedness of the Santa Cruz Portland

Cement Company, a corporation, the President and the said Frank A. Losh is, and at all of said times was, the Secretary of said Santa Cruz Portland Cement Company; that affiant has read the above-mentioned certificate and knows the contents thereof and that the same is true.

WILLIAM J. DINGEE.

FRANK A. LOSH.

Subscribed and sworn to before me this 31st day of August, 1905.

[Seal]

ADELINE COPELAND.

Notary Public in and for the City and County of
San Francisco, State of California.

State of California,

City and County of San Francisco,—ss.

H. F. Silk, of the said City and County, being duly sworn deposes and says, that he is a citizen of the United States; that he is and was at all times hereinafter mentioned, over twenty-one years of age; and is competent to be a witness on the hearing of the matters mentioned in the annexed notice; that he has no interest whatsoever in the matters mentioned therein; and that he is and was during all the time embraced in the period of the publication herein mentioned, the principal clerk of the printers and publishers of THE BULLETIN, a newspaper printed and published daily in said City and County, and has charge of all the advertisements in said newspaper; and that the annexed Notice of Stockholders' meeting of said Santa Cruz Portland Cement Company to consider proposition to create a

bonded indebtedness of which the following is a printed copy: [444—1510]

NOTICE OF STOCKHOLDERS' MEETING
OF SANTA CRUZ PORTLAND CEMENT
COMPANY TO CONSIDER PROPOSITION
TO CREATE A BONDED INDEBTEDNESS.

Notice to the stockholders of Santa Cruz Portland Cement Company is hereby given, that in pursuance of a resolution of the Board of Directors of said corporation, unanimously adopted at a meeting of said board, held at the office of the corporation in the City and County of San Francisco, State of California, on the 27th day of June, 1905, a special meeting of the stockholders of the said Santa Cruz Portland Cement Company will be held at the office of the corporation, Room No. 30 of the Crocker Building, at the southwest corner of Post, Montgomery and Market Streets, in the City and County of San Francisco, State of California (the same being the principal place of business of said corporation, and the building where the Board of Directors usually meet), on Thursday, the 31st day of August, 1905, at the hour of 10 o'clock a. m. for the purpose of considering and acting upon a proposition to create a bonded indebtedness of said corporation, to the amount of two million (2,000,000) dollars in United States gold coin, to the end and for the purpose of providing moneys to purchase property, to build and

equip a cement manufacturing plant suitable for the business of the corporation, and for legitimate and necessary purposes; which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property, both real and personal, now owned by the corporation, and which it may hereafter acquire.

By order of SANTA CRUZ PORTLAND CEMENT COMPANY.

je28W til aug 30 inx.

has been published once a week for nine successive weeks, namely, June 28th, July 5-12-19-26 August 2-9-16-23-30- 1905, in the above-named newspaper, commencing (first insertion) Wednesday, July 28th, 1905, and ending (last insertion) Wednesday, August 30th, 1905, (both days inclusive) and further sayeth not.

M. F. SILK.

Subscribed and *sworn* to this 30th day of August, 1905, before me

L. MEININGER,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,

City and County of San Francisco,—ss.

Frank A. Losh, being duly sworn, deposes and says: That he is, and was at all the times herein mentioned, the Secretary of the Santa Cruz Portland Cement Company, a corporation created, organized and existing under the laws of the State of California, and having its principal place of business in the City and County of San Francisco, State of California;

that on the 31st day of July, 1905, he addressed a true copy of the notice, which is hereto [445—151p] affixed and made a part hereof, to each one of the stockholders of said Santa Cruz Portland Cement Company, whose names appeared on the Company's books as stockholders, from and including the 27th day of June, 1905, to and including the said 31st day of July, 1905; that he addressed one notice to each of said stockholders, at his place of residence, and the place of residence of each of said stockholders was then and there known to affiant; and affiant mailed such notice to such stockholders on the said 31st day of July 1905, by depositing the same in the United States Post Office at the City and County of San Francisco, State of California, with the postage thereon fully prepaid; that each of said notices was enclosed in a separate envelope, sealed and properly addressed as aforesaid, with the United States postage thereon fully prepaid.

FRANK A. LOSH.

Subscribed and sworn to before me this 11th day of August, 1905.

[Seal]

ADELINE COPELAND,

Notary Public in and for the City and County of San Francisco, State of California.

NOTICE OF STOCKHOLDERS' MEETING
OF SANTA CRUZ PORTLAND CEMENT
COMPANY TO CONSIDER PROPOSITION
TO CREATE BONDED INDEBTEDNESS.

Notice to the stockholders of Santa Cruz Portland Cement Company is hereby given, that in

pursuance of a resolution of the Board of Directors of said corporation, unanimously adopted at a meeting of said board, held at the office of the corporation in the City and County of San Francisco, State of California, on the 27th day of June, 1905, a special meeting of the stockholders of the said Santa Cruz Portland Cement Company will be held at the office of the corporation, Room No. 30 of the Crocker Building, at the southwest corner of Post, Montgomery and Market Streets, in the City and County of San Francisco, State of California (the same being the principal place of business of said corporation, and the building where the Board of Directors usually meet), on Thursday, the 31st day of August, 1905, at the hour of 10 o'clock a. m. for the purpose of considering and acting upon a proposition to create a bonded indebtedness of said corporation, to the amount of two million (2,000,000) dollars in United States gold coin, to the end and for the purpose of providing moneys to purchase property, to build and equip a cement manufacturing plant suitable for the business of the corporation, and for legitimate and necessary purposes; which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property, both real and personal, now owned by the corporation, and which it may hereafter acquire.

. By order of the Board of Directors.

FRANK A. LOSH,

Secretary of Santa Cruz Portland Cement Company.

je28W till aug. 30 inc. [446—151q]

State of California,
City and County of San Francisco.

I, John J. Greif, County Clerk of the City and County of San Francisco, State of California, hereby certify the foregoing to be a full, true and correct copy of the original Certificate as to Creation of Bonded Indebtedness of SANTA CRUZ PORTLAND CEMENT COMPANY, filed in my office on the 31st day of August, A. D. 1905.

ATTEST my hand and my official seal this 31st day of August, A. D. 1905.

[Seal]

JOHN J. GREIF,
County Clerk.

By A. Houston,
Deputy County Clerk.

[Endorsed]: Filed in the office of the County Clerk of the City and County of San Francisco, State of California, this 31st day of August, A. D. 1905.

[Seal]

JOHN J. GREIF,
County Clerk.

By A. Houston,
Deputy County Clerk."

[Endorsed on back:] "43059. Certificate as to Creation of Bonded Indebtedness of Santa Cruz Portland Cement Company. Certified Copy. [Endorsed]: Filed in the office of the Secretary of State the 1st day of Sept. A. D. 1905. C. F. Curry, Secretary of State. By J. Hoesch, Deputy. Record Book, Page Department of State, California."

“ARTICLES OF INCORPORATION OF PUGET
SOUND PORTLAND CEMENT COMPANY.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, a majority of whom are citizens and residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California.

AND WE HEREBY CERTIFY,

FIRST: That the name of said corporation shall be

PUGET SOUND PORTLAND CEMENT
COMPANY.

SECOND: That the purposes for which it is formed are to manufacture, buy, sell and deal in cement, and the products thereof, in any part of the world, to build, construct, hire, lease, buy, own, maintain and operate works for manufacturing cement and the products thereof; to acquire, buy, sell, hold, own, mortgage, hypothecate, lease, let, exchange and improve in the modes and ways permitted by law all kinds of real and personal property including [447—151r] easements, water, water rights, and all kinds of rights and franchises; to operate quarries, mines, ditches, pipe lines, flumes, chutes, tramways, reservoirs, water works and electric plants; to generate, transport, transmit, sell water, water power and electric power; to charter, build, construct, own, lease, hire and operate steam, sailing and other vessels, and wharves, piers and warehouses, to buy, sell, take, lease, or otherwise acquire and own inventions,

and patents and all kinds of interests therein; to buy, acquire, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of any other corporation or corporations of this, or any other State, Territory or country, and also the bonds or other securities, or evidences of indebtedness of any such corporation, and, while owner of such shares, bonds, securities or evidences of indebtedness to exercise all the rights, powers and privileges of ownership including the right to vote thereon; to aid in any manner any corporation of which any of the bonds or other securities or evidences of indebtedness or stock are held by this corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or securities or evidences of indebtedness or stock; to borrow money and to convey in trust or by way of mortgage or pledge any of its property, rights and franchises, including stocks and bonds issued by it for the purpose of securing any indebtedness which it may contract, and generally to make all kinds of contracts and do and perform all other things necessary or incidental to any of the purposes hereinabove set forth.

THIRD: That the place where the principal business of said corporation is to be transacted is the City and County of San Francisco, State of California.

FOURTH: That the term for which said corporation is to exist is fifty (50) years, from and after the date of its incorporation.

FIFTH: That the number of Directors of said

corporation shall be *give* (5) and that the names and residences of those who are appointed for the first year are as follows, towit:

Names.	Whose Residence is at.
W. C. Webb,	San Francisco, California.
Edwin Schwab,	San Francisco, California.
R. M. Sims,	San Francisco, California.
R. M. Moore,	San Francisco, California.
A. F. Morrison,	San Francisco, California.

SIXTH: That the amount of the capital stock of said corporation is Five Million (5,000,000) Dollars, and the number of shares into which it is divided is fifty thousand (50,000) shares of the par value of One hundred (\$100) Dollars, each.

SEVENTH: That the amount of said Capital stock which has been actually subscribed is five hundred (\$500.00) Dollars, the following are the names of the persons by whom the same has been subscribed, to-wit:

Names of Subscribers.	No. Shares.	Amount.
W. C. Webb	One	\$100.00
Edwin Schwab	One	\$100.00
R. M. Sims	One	\$100.00
R. M. Moore	One	\$100.00
A. F. Morrison	One	\$100.00

[448—151s]

IN WITNESS WHEREOF, we have hereunto set

EDWIN SCHWAB. (Seal)

R. M. SIMS. (Seal)

R. M. MOORE. (Seal)

A. F. MORRISON. (Seal)

Endorsed on back: "366—Articles of Incorporation of Puget Sound Portland Cement Company. Dated July 13th, 1906. Filed in the office of the County Clerk of the City and County of San Francisco, State of California, this 14 day of July, A. D. 1906. H. I. Mulcrevy, County Clerk. By L. J. Welch, Deputy Clerk."

“State of California,
City and County of San Francisco,—ss.

On this 13th day of July in the year A. D. 1906, before me ADELINE COPELAND, a Notary Public, in and for said City and County residing therein, and duly commissioned and sworn, personally appeared, W. C. Webb, Edwin Schwab, R. M. Sims, R. M. Moore and A. F. Morrison, known to me to be the persons whose names are subscribed to and who executed the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal and day and year last above written.

(Seal)

(Seal) ADELINE COPELAND,
Notary Public, in and for the City and County of
San Francisco, State of California."

“ARTICLES OF INCORPORATION OF
NORTHWESTERN PORTLAND CEMENT
COMPANY.

KNOW ALL MEN BY THESE PRESENSE:

That we, the undersigned, a majority of whom are citizens and residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California,

AND WE HEREBY CERTIFY:

FIRST: That the name of said corporation shall be

NORTHWESTERN PORTLAND CEMENT
COMPANY. [449—151t]

SECOND: That the purposes for which it is formed are to manufacture, buy, sell and deal in cement, and the products thereof, in any part of the world, to build, construct, hire, lease, buy, own, maintain and operate works for manufacturing cement and the products thereof; to acquire, buy, sell, hold, own, mortgage, hypothecate, lease, let, exchange, and improve in the modes and ways permitted by law all kinds of real and personal property including easements, water, water rights and all kinds of rights and franchises; to operate quarries, mines, ditches, pipe lines, flumes, chutes, tramways, reservoirs, water works and electric plants; to generate, transport, transmit and sell water, water power and electric power; to charter, build, construct, own, lease, hire and operate steam, sailing and other vessels, and wharves, piers and warehouses; to buy, sell, take, lease or otherwise acquire and own inventions and

patents and all kinds of interests therein; to buy, acquire, own, hold, sell, assigns, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of any other corporation or corporations of this, or any other, State, Territory or country, and also the bonds of other securities or evidences of indebtedness of any such corporation, and while owner of such shares, bonds, securities or evidences of indebtedness to exercise all the rights, powers and privileges of ownership including the right to vote thereon; to aid in any manner any corporation of which any of the bonds or other securities or evidences of indebtedness or stock are held by this corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or securities or evidences of indebtedness or stock; to borrow money and to convey in trust or by way of mortgage or pledge any of its property, rights and franchises, including stocks and bonds issued by it for the purpose of securing any indebtedness which it may contract, and generally to make all kind of contracts and do and perform all other things necessary or incidental to any of the purposes hereinabove set forth.

THIRD: That the place where the principal business of said corporation is to be transacted is the City and County of San Francisco, State of California.

FOURTH: That the term for which said corporation is to exist is fifty (50) years, from and after the date of its incorporation.

FIFTH: That the number of Directors of said corporation shall be five (5) and that the names and

residences of those who are appointed for the first year are as follows, to-wit:

Names.	Whose Residence is at.
W. C. Webb,	San Francisco, California.
Edwin Schwab,	San Francisco, California.
R. M. Sims,	San Francisco, California.
R. M. Moore,	San Francisco, California.
A. F. Morrison,	San Francisco, California.

SIXTH: That the amount of the capital stock of said corporation is Five Million (5,000,000) Dollars, and the number of shares into which it is divided is Fifty Thousand (50,000) shares of the par value of One Hundred (100) dollars each. [450—151u]

SEVENTH: That the amount of said capital stock which has been actually subscribed is Five Hundred (500) dollars and the following are the names of the persons by whom the same have been subscribed to wit:

Names of Subscribers.	No. of Shares.	Amount.
W. C. Webb	One	\$100.00
Edwin Schwab	One	100.00
R. M. Sims	One	100.00
R. M. Moore	One	100.00
A. F. Morrison.	One	100.00

IN WITNESS WHEREOF we have hereunto set our hands and seals this 22nd day of August, A. D. 1906.

W. C. WEBB. [Seal]
 EDWIN SCHWAB. [Seal]
 R. M. SIMS. [Seal]
 R. M. MOORE. [Seal]
 A. F. MORRISON. [Seal]

Signed and sealed in the presence of

HENRY P. TRICOU.

STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

On this 22nd day of August in the year A. D. 1906 before me HENRY P. TRICOU, a Notary Public, in and for said City and County, residing therein, and duly commissioned and sworn, personally appeared W. C. Webb, Edwin Schwab, R. M. Sims, R. M. Moore and A. F. Morrison, known to me to be the persons whose names are subscribed to and who executed the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

[Seal]

HENRY P. TRICOU,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed on Back]: Indexed 750: Articles of Incorporation of Northwestern Portland Cement Company. Indexed. Dated August 23rd, 1906. Filed in the Office of the County Clerk of the City and County of San Francisco, State of California, this 23rd day of August, A. D. 1906. H. I. Mulerevy, County Clerk. By L. J. Welch, Deputy Clerk."

[451—151v]

“CERTIFICATE OF CREATION OF BONDED
INDEBTEDNESS of NORTHWESTERN
PORTLAND CEMENT COMPANY.

STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

WE, WILLIAM J. DINGEE, President of Northwestern Portland Cement Company, a corporation duly incorporated, organized and existing under and by virtue of the laws of the state of California and Chairman of the meeting of the stockholders thereof, hereafter mentioned, and FRANK A. LOSH, Secretary of said corporation, and Secretary of said meeting of the stockholders thereof, hereinafter mentioned, and we, WILLIAM J. DINGEE, EDWARD McCARY, W. C. WEBB, A. F. MORRISON and FRANK A. LOSH, being all of the Directors of said Northwestern Portland Cement Company, a corporation, do hereby certify and declare as follows:

That Northwestern Portland Cement Company, is and was during all the times hereinafter mentioned, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business at the City and County of San Francisco, State of California, as by its Articles of Incorporation duly filed in the office of the Secretary of State of the State of California, will more fully appear:

That the amount of the capital stock of said corporation, authorized by its Articles of Incorporation,

is five million (5,000,000.00) dollars, divided into and represented by *fifty* (50,000) *shares* of the par value of one hundred (100) dollars, each; that all of said shares, namely, fifty thousand (50,000) shares of the capital stock of said corporation, have been subscribed for and are issued and outstanding:

That the number of Directors of said corporation, as provided by its Articles of Incorporation, is five (5), and said William J. Dingee, Edward McGary, W. C. Webb, A. F. Morrison, and Frank A. Losh, constitute said Board of Directors and the whole thereof:

That said William J. Dingee is the President of said corporation, and that Frank A. Losh is the Secretary of said corporation; that at a meeting of the Board of Directors of said Northwestern Portland Cement Company duly called, noticed and held at the office of the company in the City and County of San Francisco, State of California on the 30th day of August, 1906, at which meeting of said Board all the members thereof were present and concurred therein, the following resolution was adopted by the unanimous vote of all the Directors of said corporation viz.:

‘WHEREAS, the Board of Directors of this corporation, Northwestern Portland Cement Company, a corporation created, organized and existing under the laws of the State of California, deem it expedient to create a bonded indebtedness of the corporation, to the amount of two million (2,000,000) dollars in United States Gold Coin, for the purpose of providing moneys to acquire property, construct and equip

the company's plant and to pay the indebtedness of the company, and for other legitimate and necessary purposes [452—151w] which bonded indebtedness shall be secured by a mortgage or deed of trust covering all of the property, both real and *person*, now owned by the corporation, and which it may hereafter acquire:

NOW, THEREFORE, BE IT RESOLVED that a meeting of the stockholders of this corporation, Northwestern Portland Cement Company, be, and the same is hereby called and will be held at the office of the corporation, and the building where the Board of Directors usually meet, on Saturday the 3rd day of November, 1906, at the hour of eleven o'clock A. M., for the purpose of considering and acting upon a proposition to create a bonded indebtedness of the corporation to the amount of two million (2,000,000) dollars in United States Gold Coin, to the end and for the purpose of providing moneys to acquire property, construct and equip the Company's plant and to pay the indebtedness of the Company, and for other legitimate and necessary purposes; which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property, both real and personal, now owned by the corporation, and which it may hereafter acquire, and that the secretary of the corporation cause a notice of said meeting to be given publication in "The Recorder," a newspaper of general circulation, printed and published in the City and County of San Francisco, State of California, once a week for at least sixty (60) days prior to said 3rd day of November 1906, which

notice shall specify the object of the meeting the time and place of holding the meeting, and shall state the amount of the bonded indebtedness which it is proposed to create and shall be substantially in the following form:

NOTICE OF STOCKHOLDERS' MEETING OF
NORTHWESTERN PORTLAND CEMENT
COMPANY TO CONSIDER PROPOSITION
TO CREATE A BONDED INDEBTEDNESS.

Notice to the stockholders of Northwestern Portland Cement Company is hereby given that in pursuance of a resolution of the Board of Directors of said corporation, passed and adopted at a meeting of said Board, held at the office of the corporation in the City and County of San Francisco, State of California, on the 30th day of August, 1906, a special meeting of the stockholders of said Northwestern Portland Cement Company will be held at the office of the corporation No. 1228 McAllister Street, in the City and County of San Francisco, State of California (the same being the principal place of business of said corporation, and the Building where the Board of Directors usually meet), on Saturday the 3rd day of November, 1906, at the hour of eleven (11) o'clock A. M., for the purpose of considering and acting upon a proposition for creating a bonded indebtedness of said corporation to the amount of two million (2,000,000) dollars, in United States Gold Coin, to the end and for the purpose of providing moneys to acquire property, construct and equip the Company's plant, and to pay the indebtedness of

the company, and for other legitimate and necessary purposes; which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property, both real and personal, now owned by the corporation, and which it may hereafter acquire.

By order of the Board of Directors.

Dated August 30, 1906.

.....,
Secretary of Northwestern Portland Cement Company.

And FURTHER RESOLVED: That in addition to said notice by publication, the secretary of this corporation shall address a like notice to each of the stockholders of this corporation, whose names appear on [453—151x] the corporation's books as sufficiently addressed or identified, at his place of residence, if known, and if not known then at the place in which the principal place of business of the corporation is situated, which notice shall be mailed to such stockholder at least thirty (30) days prior to the day appointed for such meeting:

And we further certify that the By Laws of said Northwestern Portland Cement Company do not prescribe, and never have prescribed the newspaper in which notices of meetings of its stockholders or Directors are to be published;

And we do further certify that in pursuance of the foregoing resolution, the said Frank A. Losh, the Secretary of said corporation, caused to be published in "The Recorder," which is and was at all times herein mentioned, a newspaper of general circulation printed and published daily (sundays and holidays

excepted) in the City and County of San Francisco, State of California, notice whereof the following is a copy:

NOTICE OF STOCKHOLDERS' MEETING OF
NORTHWESTERN PORTLAND CEMENT
COMPANY TO CONSIDER PROPOSITION
TO CREATE A BONDED INDEBTEDNESS.

Notice to the Stockholders of Northwestern Portland Cement Company is hereby given that in pursuance of a resolution of the Board of Directors of said corporation, passed and adopted at a meeting of said Board, held at the office of the corporation in the City and County of San Francisco, State of California, on the 30th day of August, 1906, a special meeting of the stockholders of said Northwestern Portland Cement Company will be held at the office of the corporation No. 1228 McAllister Street, in the City and County of San Francisco, State of California, (the same being the principal place of business of said corporation and the building where the Board of Directors usually meet) on Saturday the third day of November 1906, at the hour of eleven (11) o'clock a. m. for the purpose of considering and acting upon a proposition for creating a bonded indebtedness of said corporation to the amount of two million (\$2,000,000) dollars in United States gold coin, to the end and for the purpose of providing moneys to acquire property, construct, and equip the company's plant and to pay the indebtedness of the company, and for other legitimate and necessary purposes; which bonded indebtedness shall be secured

by a mortgage or deed of trust upon all of the property, both real and personal, now owned by the corporation, and which it may hereafter acquire.

By order of the Board of Directors.

Dated August 30, 1906.

FRANK A. LOSH,

Secretary of Northwestern Portland Cement Co.

Aug. 31-10tF.

That said publication of said notice was commenced in said newspaper on Friday the 31st day of August, 1906, and the same was published in the regular issued of said newspaper on the following succeeding days, to wit: September 27th, 1906, September 14th, 1906; September 21st, 1906; September 28th, 1906; October 5th, 1906 and November 2nd, 1906, being once a week for at least sixty (60) days prior to Saturday, the 3rd day of November, 1906, the day fixed for said stockholders' meeting and that the affidavit of due publication of said notice, marked "Exhibit A" is hereto attached and made a part hereof; [454—151y]

And we do further certify that on the 2nd day of October, 1906, a true copy of said notice was by the Secretary of said corporation addressed and mailed to each of the stockholders of said corporation whose names appeared upon the books of the corporation as sufficiently addressed or identified, and to every stockholder of the corporation whose name appeared upon the books of the corporation from and including the 30th day of August, 1906, to and including the 2nd day of October, 1906. Said notices were mailed to said stockholders by depositing the

same, addressed to each stockholder at his place of residence, in the United States Post Office, in the City and County of San Francisco, State of California, with the postage thereon fully prepaid; that at the time said notices were so addressed and mailed to such stockholders, the name of each stockholder of the corporation appeared upon the books of the corporation as sufficiently addressed and identified and the residence of such stockholder was known to said Secretary; and that the affidavit of said Frank A. Losh, the Secretary of said corporation, marked "Exhibit B," showing such mailing of such notices is hereto attached and made a part hereof;

And we do further certify and declare that in pursuance of said resolution and notice, on the day appointed, to wit: On Saturday, the 3rd day of November, 1906, at the hour of 11 o'clock A. M. of that day at the office of said corporation No. 1128 McAllister Street, in the City and County of San Francisco, State of California (the same being the principal place of business of the corporation, and being the building where the Board of Directors usually meet) said meeting of stockholders of said Northwestern Portland Cement Company only took place and was held; that said meeting was called to order by William J. Dingee, the President of said corporation, and on motion duly made, seconded, and carried, said William J. Dingee, the President of said corporation, was unanimously elected Chairman of the meeting and acted as such Chairman; and on motion duly made, seconded and carried Frank A. Losh, the Secretary of said corporation, was unanimously elected

Secretary of said meeting, and acted as such Secretary;

And we do further certify and declare that at said stockholders' meeting there were present, in person and represented by proxies in writing, duly filed with the Secretary as required by the By Laws of the corporation, stockholders holding and representing, upon the books of the Company, fifty thousand (50,000) shares of the subscribed capital stock thereof;

And we do further certify and declare that the following proceedings of said meeting of stockholders were taken and had:

The Chairman stated that the meeting had been called by the Board of Directors of the corporation, for the purpose of considering and acting upon a proposition to create a bonded indebtedness of said corporation to the amount of Two million (2,000,000) dollars, in United States Gold Coin, to the end and for the purpose of providing moneys to acquire property, construct and equip the company's plant and to pay the indebtedness of the Company, and for other legitimate and necessary purposes; the Secretary thereupon read the resolution of the Board of Directors adopted at the meeting of the Board held on the 30th day of August [455—151z] calling such meeting of stockholders, which resolution is hereinabove set forth; and also read the notice of the meeting, which notice is hereinabove set forth;

It having been shown that the publication and service of the notice of the meeting had been given in the manner and in all respects as required by law, the stockholders thereupon proceeded to consider

said proposition, and after *discussin* and considering the same, A. F. Morrison, a stockholder of the corporation, offered the following resolutions and moved their adoption:

WHEREAS HERETOFORE TO WITH: On the 30th day of August, 1906, the Board of Directors of Northwestern Portland Cement Company, a corporation, by a resolution duly passed and adopted by the unanimous vote of the Board all of the Directors being present, ordered and called a meeting of the stockholders of the corporation at eleven o'clock a. m., at the office of the corporation, No. 1228 McAllister Street, in the City and County of San Francisco, State of California, that being the principal place of business and the office of the corporation, and the building where the Board of Directors usually meet) for the object and purpose of then and there considering and acting upon a proposition to create a bonded indebtedness of the corporation to the amount of Two million (2,000,000) dollars, in United States Gold Coin, to the end and for the purpose of providing moneys to acquire property, construct and equip the company's plant and to pay the indebtedness of the corporation, and for other legitimate and necessary purposes; and

WHEREAS; in pursuance thereof, a notice of the time and place of said meeting, specifying the object of said meeting and the amount of the bonded indebtedness which it is proposed to create, has been published in 'The Recorder' a newspaper of general circulation printed and published daily in the City and County of San Francisco, State of California,

and designated therefor in said resolution of the Board of Directors, ordering and calling said meeting, once a week for at least sixty days (60) days prior to the date of said meeting, and in addition to said notice by publication the Secretary of the corporation did address a like notice to each of the stockholders of the corporation at his place of residence, which notices so addressed were mailed in the United States Post Office, at San Francisco, California, with the United States postage thereon fully prepaid, to each stockholder of the corporation, more than thirty (30) days before the day appointed for such meeting, all of which is now shown to have been done as required by law, and the said resolution of the Board of Directors; and

WHEREAS, by reason of the facts herein recited, and by virtue of law, this meeting of stockholders is qualified by a vote of stockholders, representing at least two-third of the subscribed and issued Capital Stock of the corporation, to create a bonded indebtedness to the amount mentioned in said resolution of the Board of Directors and said notices;

NOW, THEREFORE, BE IT RESOLVED that a bonded indebtedness of this corporation, Northwestern Portland Cement Company, to the amount of two million (2,000,000) dollars, in United States Gold Coin, be, and the same is, hereby authorized and created for the purpose of providing moneys to acquire property construct and equip the Company's plant and to pay the indebtedness of the Company, and for other legitimate and necessary purposes; and

[456—151aa]

BE IT FURTHER RESOLVED: that the bonded indebtedness hereby authorized and created, shall be represented by two thousand (2,000) bonds of this corporation of the denomination of one thousand (\$1000) dollars each, and that said bonds shall bear interest at the rate of nine (9) per cent per annum from their date until paid, which interest shall be payable in such installments and at such times as the Board of Directors may determine; and that said bonds shall have appropriate coupons attached for each interest payment; and that both the principal and interest of said bonds shall be payable in United States Gold coin of the present standard of weight and fineness; and that said bonds shall bear *date of* November 1st, 1906, and be payable by their terms on the first day of November, in the year 1946, except that this corporation shall reserve the right, at its option, to call in and redeem any of such bonds on the first day of November 1911, or on the first day of any May or the first day of any November, thereafter, upon payment of par value thereof, with a premium of ten (10) per cent of such par value, and the interest due thereon at the date fixed for redemption; and

BE IT FURTHER RESOLVED: that the Board of Directors, for the purpose of securing the payment of said bonds and the interest thereon, be, and it is hereby authorized empowered and directed to prepare, execute, acknowledge and deliver, or caused to be prepared, acknowledged, executed and delivered, in the name and under the seal of this corporation to the Mercantile Trust Company of San

Francisco, as Trustee, a mortgage or deed of trust bearing even date with said bonds covering all of the property, both real and personal, now owned by the corporation and all which it may hereafter acquire, and that such mortgage or deed of trust and said bonds and coupons be made in such form and contain such provisions terms and conditions in all respects as the Board of Directors may deem necessary, proper or convenience in the premises, or may authorize to be executed; and

BE IT FURTHER RESOLVED: that said bonds be sold, by and under the direction of, the Board of Directors of this Company in such lots and parcels and in such manner and upon such terms as to the Board shall seem *proper*; and

BE IT FURTHER RESOLVED: that the Board of Directors be, and it hereby is expressly authorized, empowered and directed to do and perform and to cause to be done and performed, each and every act, deed and thing whatsoever, which to said Board of Directors shall seem requisite or necessary or proper to faithfully carry out the objects and intent of these resolutions, and to fully accomplish the purposes and objects for which said bonded indebtedness has been created and authorized."

The motion to adopt said resolutions was seconded by Frank A. Losh, a stockholder of the corporation. The Chairman put the question on the adoption of the resolutions, and the stockholders then proceeded to vote upon a call of the roll by 'ayes' and 'noes' and upon said motion to adopt the resolutions the following named stockholders, owning and holding

respectively the number of shares of the subscribed capital stock of said corporation set opposite their several and respective names voted in favor of the adoption of said resolutions, that is to say:

William J. Dingee.....1 share

Edward McGary1 share

W. C. Webb.....1 share

A. F. Morrison.....1 share

[457—151bb]

Frank A. Losh.....1 share

Irving A. Bachman by William

J. Dingee, his proxy...49995 shares

Total vote50000 shares

being the unanimous vote in favor of the adoption of said resolutions by all of the stockholders present and represented by proxy at said meeting:

WHEREUPON, the chairman declared that the motion to adopt said resolutions had been unanimously carried, and that said resolutions had been passed and adopted by a vote of all the stockholders present and represented by proxy at said meeting, namely, by stockholders representing Fifty thousand (50,000) shares of the subscribed and issued capital stock of the corporation; all of which appears of record in the minutes of said meeting of the Board of Directors of said corporation, and in the minutes of the meeting of the stockholders thereof, as recorded and preserved in its record-book;

And we further certify and declare that by the proceedings aforesaid a bonded indebtedness of said Northwestern Portland Cement Company, a corpo-

ration, has been created, and authorized to be created, to the amount of \$2,000,000 in United States gold coin, that the amount of stock represented at said stockholders' meeting was 50,000 shares of the par value of \$100 each aggregating \$5,000,000 of par value; that the vote by which said bonded indebtedness was created, accomplished and authorized was a vote in favor thereof by stockholders representing 50,000 shares of the subscribed and issued capital stock of the corporation, which is more than two-thirds of the subscribed capital stock of the corporation.

IN WITNESS WHEREOF, we have hereunto set our hands and caused the corporate seal of said corporation to be hereunto affixed, this 3rd day of November, 1906.

WILLIAM J. DINGEE,
President of the Northwestern Portland Cement
Company and Chairman of Said Meeting of
Stockholders.

[Corporate Seal] FRANK A. LOSH,
Secretary of Northwestern Portland Cement Com-
pany and Secretary of Said Meeting of Stock-
holders.

WILLIAM J. DINGEE,
EDWARD McGARY,
A. F. MORRISON,
W. C. WEBB,
FRANK A. LOSH,

Directors of Northwestern Portland Cement Com-
pany. [458—151cc]

STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

On this 3rd day of November, 1906, before me HENRY P. TRICOU, a Notary Public in and for the City and County of San Francisco, duly commissioned and sworn, personally appeared William J. Dingee, known to me to be the President of Northwestern Portland Cement Company, the corporation described in the within and annexed instrument, and Chairman of the meeting of stockholders of said instrument as such Chairman and President, and Frank A. Losh, known to me to be the Secretary of said Northwestern Portland Cement Company, and the Secretary of said meeting of said stockholders of said Company, whose name is subscribed to said instrument as such Secretary, and they duly acknowledged to me that they executed said instrument as such Chairman and Secretary, respectively of said meeting, of stockholders of said corporation; and as President and Secretary respectively of said corporation; and on the same day personally appeared before me William J. Dingee, Edward McGary, W. C. Webb, A. F. Morrison and Frank A. Losh, known to me to be the Directors of said Northwestern Portland Cement Company, whose names are subscribed to the said instrument as such Directors and they severally acknowledged to me that they executed said instrument as Directors of said Northwestern Portland Cement Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of Cali-

fornia, the day and year in this certificate first above written.

(Notarial Seal) HENRY P. TRICOU,
Notary Public in and for the City and County of San
Francisco, State of California.

STATE OF CALIFORNIA,
City and County of San Francisco,—ss.

WILLIAM J. DINGEE and FRANK A. LOSH,
each being duly sworn, each for himself deposes and
says: That said William J. Dingee is the President
of Northwestern Portland Cement Company, the
corporation mentioned in the foregoing Certificate of
creation of bonded indebtedness; and that Frank A.
Losh is the Secretary of said Northwestern Portland
Cement Company; that he has read the foregoing
certificate of creation of bonded indebtedness and
knows the contents thereof, and that the same is
true.

WILLIAM J. DINGEE,
President of Northwestern Portland Cement Com-
pany, a Corporation.

FRANK A. LOSH,
Secretary of Northwestern Portland Cement Com-
pany, a Corporation.

Subscribed and sworn to before me this 3 day of
November, 1906.

(Notarial Seal) HENRY P. TRICOU,
Notary Public in and for the City and County of San
Francisco, State of California. [459—151dd]

In the Matter of the Notice of Stockholders' Meeting of Northwestern Portland Cement Company to Consider Proposition to Create a Bonded Indebtedness.

State of California,

City and County of San Francisco,—ss.

E. C. LUCHESSA, of the said City and County, having been first duly sworn, deposes and says:

That he is, and at all times herein mentioned, was a citizen of the United States over twenty-one years of age; and is competent to be a witness on the hearing of the matters mentioned in the annexed printed copy of Notice of Stockholders' Meeting of Northwestern Portland Cement Company to consider Proposition to Create a bonded indebtedness; that he has no interest whatsoever in the matters mentioned therein; that he is, and at all times embraced in the publication herein mentioned, was the Principal Clerk of the printers and Publishers of the 'Recorder,' a newspaper of general circulation, printed and published daily (Sundays excepted) in said City and County.

That deponent, as such Clerk, during all times mentioned in this affidavit has had, and still has, charge of all the advertisements in said newspaper.

That Notice of Stockholders' meeting of Northwestern Portland Cement Company to consider proposition to Create a Bonded Indebtedness, of which the annexed is a true printed copy, was published in the above-named newspaper on the following dates, to wit: August 31st, 1906, September 7th, 14th, 21st, and 28th 1906; October 5th, 12th, 19th and

26th, 1906, and November 2nd, 1906, and further dependent sayeth not.

E. C. LUCHESSA.

Subscribed and sworn to before me this 2nd day of November, 1906.

CHARLES R. HOLTON,

Notary Public in and for the City and County of San Francisco, State of California.

‘EXHIBIT A.

NOTICE OF STOCKHOLDERS' MEETING OF
NORTHWESTERN PORTLAND CEMENT
COMPANY TO CONSIDER PROPOSITION
TO CREATE A BONDED INDEBTEDNESS.

Notice to the Stockholders of Northwestern Portland Cement Company is hereby given that in pursuance of a resolution of the Board of Directors of said corporation, passed and adopted at a meeting of said Board, held at the office of the corporation in the City and County of San Francisco, State of California, on the 30th day of August, 1906, a special meeting of the stockholders of said Northwestern Portland Cement Company will be held at the office of the corporation, No. 1228 McAllister Street, in the City and County of San Francisco, State of California (the same [460—151ee] being the principal place of business of said corporation and the building where the BOARD of Directors usually meet) on Saturday the third day of November, 1906, at the hour of eleven (11) o'clock a. m. for the purpose of considering and acting upon a proposition for creating a bonded indebtedness of said corporation to the amount of two

million (2,000,000) dollars, in United States gold coin, to the end and for the purpose of providing moneys to acquire property construct and equip the company's plant and to pay the indebtedness of the company, and for other legitimate and necessary purposes; which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property both real and personal, now owned by the corporation, and which it may hereafter acquire.

By order of the Board of Directors.

Dated August 30, 1906.

FRANK A. LOSH,

Secretary of Northwestern Portland Cement Company.

Aug. 31-10 tF.'

(Endorsed): In the Superior Court in and for the City and County of San Francisco, State of California. Department In the Matter of the Notice of Stockholders' Meeting of Northwestern Portland Cement Company to Consider Proposition to Create a Bonded Indebtedness. Affidavit of Public in the 'THE RECORDER' of Notice of Stockholders' Meeting of Northwestern Portland Cement Company to Consider Proposition to Create a Bonded Indebtedness. Frank A. Losh, Secretary."

STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

FRANK A. Losh, being first duly sworn, deposes and says: That he is, and was at all the times herein mentioned, the Secretary of Northwestern Portland Cement Company, a corporation created, organized

and existing under the laws of the State of California.

That on the 2nd day of October, 1906, at the City and County of San Francisco, State of California, he addressed a notice of which copy is attached hereto and made a part hereof, to each of the stockholders of said Northwestern Portland Cement Company, whose name appears upon the Company's books between the 30th day of August, 1906, and the 2d day of October, 1906, both days inclusive, at such stockholders place of residence, and that the place of residence of each of said stockholders was at all such times known to affiant; and that affiant mailed said notice, in the case of each stockholder, to such stockholder so addressed by depositing the same on said 2nd day of October, 1906, in the United States Post Office at San Francisco, California with the postage thereon prepaid.

FRANK A. LOSH.

Subscribed and sworn to before me this 2nd day of Oct., 1906.

(Notarial Seal) ADELINE COPELAND,
Notary Public, in and for the City and County of San
Francisco, State of California. [461—151ff]

‘EXHIBIT B.

NOTICE OF STOCKHOLDERS' MEETING OF
NORTHWESTERN PORTLAND CEMENT
COMPANY TO CONSIDER PROPOSITION
TO CREATE A BONDED INDEBTEDNESS.

Notice to the stockholders of Northwestern Portland Cement Company is hereby given that in pursu-

ance of a resolution of the Board of Directors of said corporation, passed and adopted at a meeting of said Board, held at the office of the corporation in the City and County of San Francisco, State of California, on the 30th day of August, 1906, a special meeting of the stockholders of said Northwestern Portland Cement Company will be held at the office of the corporation No. 1228 McAllister Street, in the City and County of San Francisco, State of California (the same being the principal place of business of said corporation and the building where the Board of Directors usually meet) on Saturday the third day of November, 1906, at the hour of eleven (11) o'clock a. m. for the purpose of considering and acting upon a proposition for creating a bonded indebtedness of said corporation to the amount of two million (\$2,000,000) dollars in United States gold coin, to the end and for the purpose of providing moneys to acquire property, construct and equip the company's plant and to pay the indebtedness of the company, and for other legitimate and necessary purposes; which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property, both real and personal, now owned by the corporation, and which it may hereafter acquire.

By order of the Board of Directors.

Dated August 30th, 1906.

FRANK A. LOSH,

Secretary of Northwestern Portland Cement Company.

Aug. 31-10t F.' "

(Endorsed on back): "No 750 (Original). Certificate of Creation of Bonded Indebtedness of North-

western Portland Cement Company. Dated November 3, 1906. Filed in the office of the County Clerk of the City and County of San Francisco, State of California, this 5th day of Nov., 1906. H. I. Mulcrevy, County Clerk. By L. J. Welch, Deputy Clerk." [462—151gg]

“ARTICLES OF INCORPORATION.

of

STANDARD PORTLAND CEMENT CORPORATION.

No. 904.

C. F. Curry, Secretary of State.

J. Hoesch, Deputy.

STATE OF CALIFORNIA.

DEPARTMENT OF STATE.

I, C. F. Curry, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Incorporation of STANDARD PORTLAND CEMENT CORPORATION with the certified copy of the original now on file in my office and that the same is a correct transcript therefrom, and of the whole thereof. Also that this authentication is in due form, and by the proper officer.

WITNESS my hand and the Great Seal of State at office in Sacramento, California, the 25th day of February, A. D. 1907.

(Seal)

C. F. CURRY,

Secretary of State.

By
Deputy.”

“ARTICLES OF INCORPORATION
of
STANDARD PORTLAND CEMENT CORPORATION.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, all of whom are citizens of the United States of America, and residents and citizens of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California.

AND WE HEREBY CERTIFY:

FIRST: That the name of said corporation shall be

STANDARD PORTLAND CEMENT CORPORATION.

SECOND: That the purposes for which it is formed are:

(1) To manufacture, buy, sell and deal in all parts of the world in cement and the products thereof, and in all materials and substances contained in the earth, or in whole or in part, manufactured from or compounded of any materials or substances so contained;

(2) To build, construct, hire, lease, buy, own, maintain, construct and operate works, buildings and offices for manufacturing and dealing in cement, and the products thereof, and for manufacturing and dealing in the other materials and substances above mentioned;

(3) To acquire, invest, and deal in, buy, sell,

hold, own, mortgage, hypothecate, lease, let, exchanged and improve, in all lawful ways, all kinds of real and personal property including [463—151hh] easements, water and water rights, and all kinds of rights and franchises, and bonds or other obligations of the United States of America, or of this or any other State or Territory of the United States of America, or of this or any other State or Territory of the United States of America, or of any municipal or political corporation therein or thereof;

(4) To acquire, own, hold and operate quarries, mines, ditches, pipe-lines, flumes, chutes, tramways, reservoirs, water works and electrical plants; and to generate transport, transmit, and sell water, water-power and electrical power;

(5) To charter, build, construct, own, lease, hire and operate steam, sailing and other vessels, and wharves, piers, and warehouses;

(6) To buy, sell, take, lease or otherwise acquire, own, inventions, licenses and patents, and all kinds of interest therein;

(7) To acquire by purchase, subscription or otherwise, and to hold, own, deal in, sell, assign, transfer, mortgage, pledge, and otherwise dispose of shares of the capital stock of, and any bonds or other evidences of indebtedness secured or unsecured, granted or issued by any other corporation or corporations, of this or any other State, Territory, or country, and to exercise all rights and powers of ownership, including the right to vote thereon;

(8) To borrow and lend money, and execute bonds, promissory notes, bills of exchange and other obligations and evidences of indebtedness of all

kinds, whether secured by mortgage, deed of trust, or otherwise, or unsecured;

(9) To mortgage, pledge and convey in trust all or any part of the property, rights, interests and franchises of this corporation and to pledge all or any bonds, promissory notes, bills of exchange and all securities of any kind, and all evidences of indebtedness, secured or unsecured, at any time owned by such corporation.

(10) To aid in any manner any corporation of which any of the bonds or other securities or evidences of indebtedness or stock are held by this corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or securities or evidences of indebtedness or stock;

(11) To engage in and conduct any other business incidental, necessary, useful or auxiliary to all or any of the purposes or business aforesaid.

(12) Generally to do and perform all things whatsoever that shall be necessary or proper for the full and complete execution of the purposes for which such corporation is formed, and the exercise and enjoyment of all its powers and franchises; and in general to engage in, undertake, transact and do all and singular the things which natural persons may lawfully engage in, undertake, transact and do other than those things which a corporation organized under the laws of this state cannot lawfully do without complying with the special provisions contained in titled II to XVI, both numbers included of Part IV, Division One of the Civil Code of the State of California. [464—151ii]

THIRD: That the place where the principal business of said corporation is to be transacted is and shall be the City and County of San Francisco, State of California.

FOURTH: That the term for which said corporation is to exist is fifty years from and after the date of its incorporation.

FIFTH: That the number of directors of said corporation shall be five, and that the names and residences of those who are appointed for the first year are as follows:

Names.	Whose Residence is at	
James L. Robinson	San Francisco, California.	
Walter Rothchild	“	“
Thomas D. Davidson	“	“
Joseph H. Mayer	“	“
Andrew F. Burke	“	“

SIXTH: That the amount of the capital stock of said corporation is Four million dollars (4,000,000) and the number of shares into which it is divided is *Fort* thousand (40,000) shares of the par value of One hundred dollars (\$100) each.

SEVENTH: That the amount of said capital stock which has been actually subscribed is Five Hundred Dollars (\$500.00) and the following are the names of the persons by whom the same has been subscribed:

Names of Subscribers.	Number of Shares	Amount
James L. Robinson	One	\$100.00
Walter Rothchild	One	100.00
Thomas D. Davidson	One	100.00
Joseph H. Mayer	One	100.00
Andrew F. Burke.	One	100.00

IN WITNESS WHEREOF, we have hereunto set our hands and seals this Twenty third day of February A. D. 1907.

JAMES L. ROBINSON. (Seal)

WALTER ROTHCHILD. (Seal)

THOMAS D. DAVIDSON. (Seal)

JOSEPH H. MAYER. (Seal)

ANDREW F. BURKE. (Seal)

Signed and Sealed in the Presence of:

STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

On this twenty third day of February in the year A. D. 1907, before me Hugh T. Sime, a Notary Public in and for the said City and County, residing therein, and duly commissioned and sworn, personally appeared JAMES L. ROBINSON, WALTER ROTHCHILD, THOMAS D. DAVIDSON, JOSEPH H. MAYER, and ANDREW F. BURKE, known to me to be the persons whose names are subscribed to and who executed the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed [465—151jj] my official seal the day and year last above written.

(Notarial Seal)

HUGH T. SIME,

Notary Public in and for the City and County of San Francisco, State of California.

Filed in the office of the County Clerk of the City and County of San Francisco, State of California, this 23rd day of Feb. A. D. 1907. H. I. Mulerevy, County Clerk. By L. J. Welch, Deputy Clerk.

City and County of San Francisco,
State of California,—ss.

I, H. I. MULCREVY, County Clerk of the City and County of San Francisco, State of California, do hereby certify that the annexed is a full, true and correct copy of the original articles of incorporation of STANDARD PORTLAND CEMENT CORPORATION, and of the whole thereof now remaining on file and of record in my office.

WITNESS my hand and official seal this 23rd day of February, A. D. 1907.

(Seal)

H. I. MULCREVY,

County Clerk.

H. I. Porter,

Deputy Clerk."

Endorsed on back: "Certified Copy (By the Secretary of State) of a Certified Copy of Articles of Incorporation of Standard Portland Cement Corporation. Dated February 23rd, 1907. (Endorsed:) Filed in the Office of the County Clerk of the City and County of San Francisco, State of California, this 23rd day of Feb., A. D. 1907. H. I. Mulcrevy, County Clerk. By L. J. Welch, Deputy Clerk. (Endorsed:) Filed in the Office of the Secretary of State the 25th day of Feb. A. D. 1907. C. F. Curry, Secretary of State. By J. Hoesch, Deputy. Record Book Page" [466—151kk]

Mr. DUNNE.—I will read into the reporter's notes the following historical facts connected with the directorate of the Northwestern Portland Cement Company as shown by the minutes. The original

directorate consisted of W. C. Webb, Edwin Schwab, R. M. Sims, R. M. Moore, A. F. Morrission,—W. C. Webb resigned November 7th, 1906. Edwin Schwab, R. M. Sims, R. M. Moore, resigned October 25th, 1906. A. F. Morrission's position declared vacant November 8, 1906. Edward McGary, vice Schwab, resigned November 23, 1908. Frank A. Losh, vice R. H. Moore, resigned Feb. 8, 1907. Garrett W. McEnerney, vice A. F. Morrission, resigned Dec. 1, 1908. W. H. Cole, vice Edward McGary elected Dec. 1, 1908, resigned May 3, 1909. Samuel A. Boyd, vice Losh, resigned Aug. 21, 1907. Andrew F. Burke, vice Garrett W. McEnerney resigned May 3, 1909. L. F. Young, vice Boyd, resigned May 3, 1909. William J. Dingee, vice R. M. Sims, now serving. Irving A. Bachman, vice W. C. Webb, now serving. W. M. Cannon, vice Young, now serving. At the meeting October 25, 1906, of the Northwestern Portland Cement Company, as appears from page 17 of the minutes of that company, Mr. Edward McGary a stock holder was elected a director, in the place and stead of director Edwin Schwab, and Mr. Frank A. Losh was elected a director at the same meeting. Garrett W. McEnerney was elected a director on Nov. 8th, 1906; William J. Dingee was elected a director at a meeting on October 25, 1906. Irving A. Bachman was elected a director on Nov. 7th, 1906.

